

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1269 OF 2020

Ramesh s/o Sampat Gangarde
Age: 55 Yrs., occu. Agril
R/o Mandawgan, Tq.Shrigonda,
District Ahmednagar = APPLICANT

VERSUS

The State of Maharashtra
Through Police Inspector, Shrigonda
Police Station, Tq. Shrigonda,
District Ahmednagar = RESPONDENT

Mr.RR Karpe, Advocate for Applicant;
Mr.SP Deshmukh, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 25th November, 2020.

PER COURT:-

1. Present application has been filed under Section 439 of Cr.P.C seeking regular bail. The applicant has been arrested in connection with CR No.I-1086/2020 dated 28.8.2020 registered with Shrigonda Police Station, District Ahmednagar for the offence punishable under Section 307 of IPC.

2. Heard learned Advocate and learned APP for respective parties.

(2)

3. It has been vehemently submitted on behalf of the applicant that investigation in the crime, in question, is almost over and further custody of the applicant is not required. The FIR has been lodged by nephew of the present applicant. Informant – Mangesh Swaminath Kedari himself is an accused in CR No.1085/2020 registered with the same police station on the same date. Two offences came to have been registered in respect of almost the same incident. As per the FIR against the informant, i.e. CR No.1085/2020, offence under Section 302 of IPC has been registered for committing murder of real brother of the present applicant by the said informant. That FIR has been registered first in time, i.e. at about 05.56 AM on 28.8.2020 for the incident that has taken place between 12.30 pm to 1.00 pm of 27.8.2020; whereas the FIR that is registered against the present applicant came to be registered at 17.55 hrs. Taking into consideration this aspect false implication cannot be ruled out. Further, it can also be seen from the FIR that the present applicant as well as his brother deceased – Kanifnath and even the informant in this case –

(3)

Mangesh Swaminath Kedari were under the influence of liquor and, therefore, the incident might have happened in the spur of the moment. There was absolutely no intention on the part of the present applicant to commit murder of his nephew. He, therefore, deserves to be released on bail.

4. Per contra, learned APP strongly objected the application on the ground that as the witnesses are related to the present applicant, possibility of tampering the prosecution evidence cannot be ruled out. There was dispute between the deceased, who was maternal uncle of the informant and the informant on the ground as to why he had brought down and reduce the rate of *farsan*, which they wanted to consume along with liquor. The offence is serious. The applicant had assaulted the informant by means of knife on his neck and, therefore, intention is clear. Offence under Section 307 of IPC has been made out.

5. At the outset, it can be seen that FIR No.1085/2020 under Section 302 of IPC against the present informant was registered prior in time. If

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we peruse contents of the said FIR, it can be seen that though present informant, i.e. Mangesh Swaminath Kedari was stated to be present when the informant in FIR No.1085/2020 viz. Mangesh Kanifnath Gangarde came, was at the spot of occurrence and he had received the injuries. The fact also appears that present applicant was also present when son of the deceased came from Pune to the spot. Present applicant did not inform the death of his brother to the police, but it has been informed by son of the deceased. The incident appears to have happened either in different way or picture that has been now painted is different. But, we will have to go through the allegations in the concerned FIRs and then it appears that the informant in the present case, who has filed the FIR against the present applicant, himself is an accused in the earlier registered FIR. The FIR against the present applicant appears to have been lodged when the informant Mangesh Swaminath Kedari was admitted in Civil hospital. No doubt, it appears that he has received the injury to his neck, but even from the contents of his FIR as well as the FIR lodged against him, it can be seen that

(5)

present applicant, the deceased and present informant had consumed liquor. In addition, in FIR No.1085/2020 under Section 302 of IPC, it is stated that the informant Mangesh Swaminath Kedari and deceased had consumed *Ganja*. Police papers would show that statement of one witness viz. Appasaheb Dimaji Sadaphule has been recorded under Section 164 of Cr.P.C. wherein he states that deceased Kanifnath as well as present applicant had consumed liquor. Kanifnath was assaulting Mangesh with a stick, but, thereafter, the witness went away from the spot. Presence of the applicant appears to have been stated by the witness, but he has not witnessed the present applicant assaulting the informant. Therefore, taking into consideration the fact that substantial part of the investigation appears to be over and for the reasons, as aforesaid, the application deserves to be allowed with conditions. Hence, following order, -

ORDER

i. The Bail Application is hereby allowed.

ii. The applicant be released in connection with CR No.I-1086/2020 dated 28.8.2020 registered with Shrigonda Police

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Station, Dist. Ahmednagar for the offence punishable under Section 307 of IPC on PR of RS.30,000/- with two sureties of Rs.15,000/- each.

iii. The applicant shall not tamper with the evidence of the prosecution in any manner. He should remain present before the Investigating Officer on every Monday and Thursday between 10.00 am to 2.00 pm till filing of charge sheet.

iv. Bail before the trial court.

(SMT. VIBHA KANKANWADI,J.)

BDV