

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**910 BAIL APPLICATION NO.73 OF 2021
WITH APPLN/295/2021 IN BA/73/2021**

Sayyad Jafar s/o Sayyad Issaq @ Ladya ..Applicant

Versus

The State of Maharashtra ..Respondent

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Mr. Anand P. Bhandari, Advocate for the Applicant.

Mr. N.T. Bhagat, APP for the Respondent/State.

Mr. Mahesh P. Kale, Advocate for Assist to P.P.

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**CORAM : SMT. VIBHA KANKANWADI, J.
DATED : 04th MARCH, 2021**

PER COURT:-

1. Present applicant has been arrested on 27.07.2020 in connection with Crime No.415 of 2020 registered with Nanalpeth Police Station, District Parbhani for the offence punishable under Section 302, 201 read with 34 of the Indian Penal Code. Present application has been filed under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. Bhandari for the applicant and learned APP Mr. Bhagat for the respondent-State well assisted by learned Advocate Mr. Kale for the original informant.

3. It has been vehemently submitted on behalf of the applicant that perusal of the FIR, which is lodged by cousin

brother of the deceased Jamir Khan would show that Jamir had extended amount of Rs.20,000/- to accused no.1, Sayyad Jafar Sayyad Akhtar. It is further stated that Jamir was demanding repayment of the said amount time and again, however, it has raised dispute between Jamir and accused no.1. The informant further states that the incident had taken place at about 08.00 pm on 09.07.2020. Informant posed himself as the eye witness. He has given names of four accused persons including the present applicant and it is stated that they were disputing with Jamir. Accused no.2, Mujahid Hashmi caught hold of Zameer and thereafter, accused no.1, Sayyad Jafar had assaulted Jamir by iron rod on his forehead and present applicant Sayyad Jafar Sayyad Issaq @ Ladya has assaulted by means of knife on the right side of the chest. Bleeding injuries were caused and thereafter all the assailants fled away. Jamir was taken to hospital, however, he was declared dead. FIR came to be lodged on 10.07.2020 at 02.58 am. Thereafter, there is supplementary statement of the informant recorded on 15.07.2020 in which he has stated that he had wrongly stated that accused no.1 has assaulted by iron rod when in fact, he has assaulted by knife and present applicant had assaulted by iron rod and it has been wrongly written in the FIR as he has assaulted by knife. Perusal of the inquest panchnama as well as the postmortem report would show, that there were two stab injuries on the right side of chest and one incised wound

on the forehead just above right eye brow. The probable cause of death that is given is "death due to injury to vital organ lungs with massive bleeding". Statements of other witnesses would also show that the present applicant is stated to have assaulted by iron rod on head, which is not the cause of death. Now, the substantial part of the investigation is over and therefore, further physical custody of the present applicant is not required. He is the only earning member of the family and therefore, he be released on bail.

4. Learned APP well assisted by learned Advocate Mr. Kale for the original informant has strongly opposed the application and submitted that present applicant has played active role in commission of the crime. Discovery of weapon is by accused no.1. All the witnesses who were the eye witness have corroborated in their statement and the other witnesses had the knowledge about the extending amount by deceased Jamir to accused no.1. If the applicant is released on bail, then he may tamper with the evidence of the prosecution.

5. At the outset, it can be seen that the investigation is complete and charge sheet is filed. Under such circumstance, further physical custody of the applicant is no longer required for the purpose of investigation. Now, it is required to be seen, as to what evidence has been collected against the present applicant. The prosecution itself had come

with a case that deceased had extended loan to accused no.1 and he was demanding the said amount from accused no.1. Perusal of the entire charge sheet would show that there was no financial transaction between deceased and the present applicant. There is also no such evidence on record to show that present applicant is anywhere related to accused no.1. Whether, merely because a friend had taken amount and has dispute with somebody, whether another person would have a common intention, which can be described under Section 34 of the Indian Penal Code would make him responsible, is a question. At this stage of bail, we will have to only consider the evidence on record and the evidence that is collected shows that the present applicant is stated to have assaulted deceased by iron rod on his forehead. It need not be repeated but then the clarification has been made by the informant himself in respect of the allegations in the FIR. Other witnesses have also stated about assault by iron rod by this applicant on the forehead. That iron rod has been discovered by accused no.1 under Section 27 of the Indian Evidence Act. If we consider the description of the iron rod, it was hollow and was having length of 2 feet 5 inch and diameter of 1 inch. It appears that the Investigating Officer has not sent the weapons seized to the medical officer, who had conducted the postmortem report and has not ascertained, as to whether the injuries noted by the medical officer on the person of the

deceased are possible by such weapon. Column no.17 of postmortem report gives two stab injuries which of course would have been by the knife, but then the 3rd injury is incised wound 7 x 1.5 cm over forehead mid 1/3 oblique from just above right eye brow toward (It) directing upward-redish. At this stage, there is no opinion of the expert independent to show that this injury i.e. 3rd injury would have caused death of the deceased. As aforesaid, opinion regarding cause of death is mainly in respect of injury to the vital organ lungs with massive bleeding, therefore, taking into consideration this evidence against the present applicant, he deserves to be released on bail, however, with stringent conditions. Hence, the following order is passed:

ORDER

- I) The application stands allowed.
- II) The applicant viz. Sayyad Jafar Sayyad Issaq @ Ladya arrested in connection with Crime No.415 of 2020 registered with Nanalpeth Police Station, District Parbhani for the offence punishable under Section 302, 201 read with 34 of the Indian Penal Code, be released on P.R. Bond. of Rs. 50,000/- (fifty thousand) with two solvent sureties of Rs.25,000/- (twenty five thousand) each.
- III) The applicant shall not reside at Parbhani City till the conclusion of the trial and he is allowed to enter Parbhani City only for the purpose of attending dates in respect of the

present case.

IV) The applicant should inform his place of residence till the trial is over to the trial Court as well as the Investigating Officer and also to the nearby police station, where he would be residing. He should give his mobile number with the Court, Investigating Officer and the nearby police station.

V) The applicant shall not tamper with the evidence of the prosecution in any manner and shall cooperate with the investigation.

VI) The applicant to comply the requirements under Para 12 (1) to (6) of Chapter-I of Criminal Manual before the trial Court (whichever are applicable).

VII) The applicant shall not indulge in any criminal activity.

VIII) It is clarified that the observations made in the above order are restricted for decision of this application only and the trial Court shall not be influenced by the same.

IX) It is further clarified that if any condition is breached, then the State/prosecution is at liberty to file application under Section 439 (2) of the Code of Criminal Procedure.

X) Bail before the trial Court.

XI) Application for assist to Public Prosecutor is allowed and disposed of.

(SMT. VIBHA KANKANWADI, J.)