

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

BAIL APPLICATION NO.450 OF 2021

**SHANKAR S/O SOPAN SHIKARE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...
Advocate for Applicant : Mr. Tekale Nikhil S.
APP for Respondents/State : Mr. S.N. Morampalle

...

**CORAM : M.G. SEWLIKAR, J.
DATE : 01.07.2021**

PC.:-

This is an application under Section 439 of the Cr.P.C. for releasing the applicant on bail.

2. Facts leading to this application are that the deceased was the husband of the informant. The gravamen of the prosecution case is that the deceased had gone to the field in which a Datta temple is located. According to the prosecution there was a programme of Bhajan (Devotional songs). The deceased had gone to the Datta temple at 7.30 pm. At 8.30 pm the applicant heard screams of her husband, therefore she went there running and found her husband in a pool of blood. She also saw one person leaving the Datta temple in a hurry. She had also noticed that the said person concealing a weapon. The deceased was shifted to the hospital but he was reported dead

on arrival in Rural Hospital, Jamkhed. Accordingly, FIR came to be lodged on 03.03.2019 at 04.03 am.

3. Dog squad was called. The dog started barking at the applicant because of which the applicant was apprehended. Thereafter, supplementary statement of the informant was recorded in which she stated that the applicant was the same person whom she had seen soon after the incident. The applicant was accordingly arrested.

4. Heard Shri Tekale learned counsel for the applicant and Shri Morampalle learned APP for the State.

5. Shri Tekale submitted that the involvement of the applicant could be revealed only after summoning of the dog squad. He submitted that the evidence in regard to the dog squad is a weak piece of evidence. He submitted that the informant was knowing the applicant since before the incident. Even then she did not name the applicant in the FIR. He submitted that statement of her son has also been recorded. He was also present when the applicant was allegedly leaving the Datta temple soon after the incident. He submitted that the son of the deceased was also knowing the applicant since before the incident. Despite this neither the informant nor her son mentioned the name of the applicant to the police soon after the incident. He

submitted that this itself completely rules out the involvement of the applicant in the alleged offence.

6. Learned APP Shri Morampalle argued that the offence is of a serious nature. Soon after the incident villagers had seen the applicant armed with a knife. He submitted that this circumstance connects the applicant with the offence and therefore the applicant cannot be released on bail.

7. Shri Tekale submitted that the applicant is a mentally challenged person. As per the orders of this Court dated 10.12.2020 the applicant was referred to the mental asylum where he was treated and the criminal committee has submitted the report dated 24.02.2201 and observed that the applicant is now mentally sound to make his defence. By the same order the applicant was permitted to apply for regular bail.

8. As per the prosecution case, soon after the incident, the informant and her son went to the temple where the incident took place. At that time the applicant was seen leaving the premises of temple clandestinely concealing some weapon. From the supplementary statement of the informant it appears that she was knowing the applicant even before the incident. Even then she did not name the applicant in the FIR. She mentioned the name of the applicant only after the sniffer dog started barking at the applicant. It is

settled law that the evidence of dog squad is a weak piece of evidence. Except this evidence there is nothing on record to connect the accused with the offence. Learned APP could not point out any other incriminating circumstance to connect the accused with the offence. There is no recovery from the applicant either. Having regard to all these circumstances, I am inclined to release the applicant on bail. Hence the following order is passed:

ORDER

- I) Application is allowed.
- II) Applicant be released on PR bond of Rs.15,000/- with one solvent surety in the like amount, in connection with Crime No.110 of 2019 under Section 302 of the I.P.C. registered with Jamkhed Police Station, District Ahmednagar (Sessions Case No. 250 of 2019 pending before the Additional Sessions Judge, Shrigonda.)

[M.G. SEWLIKAR, J.]