

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 485 OF 2021

Mohammad Sajid s/o Mohd. Khaja @ Pintu Applicant

Versus

The State of Maharashtra Respondent

Mr. N.S. Ghanekar, Advocate for the applicant.

Mr. Y.G. Gujarathi, APP for respondent/State.

CORAM : M.G. SEWLIKAR, J.

DATE : 29th June, 2021.

PER COURT :

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail.

2. Father of deceased Sainath lodged a report on 26th September, 2020, alleging that the friend of Sainath by name Anwar Sadat brought Sainath home. At that time Sainath was bleeding profusely. Anwar told the informant that at Citizen Dhaba, Sainath and Anwar had gone to accused Azim for demanding money which Sainath had lent to Azim. At that time, Azim and the applicant, who is the owner of Citizen Dhaba, beat Sainath. Azim delivered blows of a dagger in the back and shoulder of Sainath. Sainath was shifted to

the hospital. However, during treatment Sainath died. Therefore, offence under Section 302 read with Section 34 of the Indian Penal Code came to be registered against the applicant and Azim.

3. Heard Shri Ghanekar, learned counsel for the applicant and Shri Gujarathi, learned APP for the State.

4. Learned counsel Shri Ghanekar submitted that Sainath had lent money to Azim and for recovering the same Sainath had gone to Azim. The applicant is the owner of Citizen Dhaba. He has no concern with Azim and Sainath. Azim had joined the Dhaba of the applicant a few days before the incident. He submitted that the statement of Anwar was recorded on 9th October, 2020, whereas the incident took place on 26th September, 2020. No explanation is forthcoming as to why the statement of Anwar was recorded so late. In the said statement, Anwar has stated that Sainath was held by applicant from behind and Azim delivered blows of dagger on his shoulder. He submitted that had this incident really happened, it would have found place in the First Information Report. He submitted that in order to implicate the applicant, Anwar has stated in his statement under Section 161 of the Code of Criminal Procedure

that the applicant had held the deceased from behind.

5. Learned counsel Shri Ghanekar further submitted that two cases were pending against the applicant. However, in both the crimes he has been acquitted. He submitted that the charge-sheet is filed. Therefore, the applicant be released on bail.

6. Learned APP submitted that in both these cases the applicant came to be acquitted as the witnesses turned hostile. He submitted that if the applicant is released on bail, the witnesses in this case will also turn hostile. He submitted that the applicant intentionally participated in the crime and therefore, he shall not be released on bail.

7. On perusal of the charge-sheet, it is seen that the deceased Sainath had lent some amount to Azim. Azim is the employee of the applicant. Applicant had not taken any loan from Sainath. He had no concern either with Sainath or Azim so far as transaction between them is concerned. It is worth noting that the applicant had allegedly held the deceased from behind. A dagger was thrust on the shoulder of the deceased. Therefore, in all

probabilities, the clothes of the applicant would have had stains of blood. But the seizure panchanama of clothes does not disclose blood stains. Having regard to the fact that charge-sheet is filed and trial is not likely to be concluded in near future considering the pandemic situation created by Covid 19 and having regard to the role played by the applicant in the alleged offence, I am inclined to release the applicant on bail. Hence the following order :-

ORDER

- I) Application is allowed.
- ii) Applicant be released on PR Bond of Rs. 75,000/- (Rs. Seventy Five Thousand Only) with one solvent surety in the like amount, in connection with Crime No. 678/2020 (Sessions Case No. 1/2021), registered with Nanded Rural Police Station, District Nanded, for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code.
- iii) Application is disposed of.

(M. G. SEWLIKAR)
Judge