

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.101 OF 2021

Shaikh Sartaj @ Ajji Dada s/o Shaikh Nasir,
Age 28 years, Occupation Labour,
R/o Yunus Colony C/o. Shaikh Javed,
Katkat Gate, Aurangabad. **.....Applicant**

VERSUS

The State of Maharashtra,
Through Cantonment Police Station,
Aurangabad. **.....Respondent**

.....
Advocate for Applicant : Mr. S. S. Jadhav
APP for Respondent-State : Mr. S. B. Narwade

WITH
BAIL APPLICATION NO.1466 OF 2020

Shaikh Ashfaq s/o Shaikh Ishaq,
Age 25 years, Occupation Business,
R/o Shahbazar Aurangabad. **.....Applicant**

VERSUS

The State of Maharashtra. **.....Respondent**

.....
Advocate for Applicant : Mr. M. A. Latif
APP for Respondent-State : Mr. S. B. Narwade

WITH
CRIMINAL APPLICATION NO.197 OF 2021
IN BAIL APPLN/1466/2020

Ansar Khan Hussain Khan
Age 23 years, Occupation Education,
R/o Chjavani Pinsinghpura,
Aurangabad.

.....Applicant

VERSUS

- 1) Shaikh Ashfak s/o Shaikh Isak,
Age 25 years, Occupation Labour,
R/o Near Anisa Urdu School,
Ravindranagar, Shah Bazar,
Aurangabad.
- 2) The State of Maharashtra,
Through Police Station Officer
Cantonment (Chavani) Police
Station Tq. And Dist.Aurangabad. **.....Respondents**

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Advocate for Applicant : Mr. N. V. Gaware
APP for Respondent No.2-State : Mr. S. B. Narwade
Advocate for Respondent No.1 : Mr. M. A. Latif

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**WITH
BAIL APPLICATION NO.1484 OF 2020**

Shaikh Bashir @ Munna Bochra s/o Shaikh Karim,
Age 40 years, Occupation Labour,
R/o Kasmbari Dargah, Near Karim Masjid,
Padegaon, Aurangabad.

.....Applicant

VERSUS

The State of Maharashtra,
(At the instance of Cantonment
Police Station).

.....Respondent

.....

Advocate for Applicant : Mr. A. K. Bhosle
APP for Respondent-State : Mr. S. B. Narwade

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**WITH
CRIMINAL APPLICATION NO.200 OF 2021
IN BAIL APPLN/1484/2020**

Ansar Khan Hussain Khan,
Age 23 years, Occupation Education,
R/o Chjavani Pinsinghpura,
Aurangabad.

.....Applicant

VERSUS

- 1) Shaikh Bashir @ Munna Bochra s/o Shaikh Karim,
Age 40 years, Occupation Labour,
R/o Kasmbari Dargah, Near Karim Masjid,
Padegaon, Aurangabad.
- 2) The State of Maharashtra,
Through Police Station Officer
Cantonment (Chavani) Police Station,
Tq. And Dist. Aurangabad.

.....Respondents

.....

Advocate for Applicant : Mr. N. V. Gaware
APP for Respondent No.2-State : Mr. S. B. Narwade
Advocate for Respondent No.1 : Mr. A. K. Bhosle.

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**WITH
CRIMINAL APPLICATION NO.2210 OF 2020
IN BAIL APPLN/1466/2020**

Shaikh Ashfak s/o Shaikh Isak,
Age 25 years, Occupation Business,
R/o Shahbazar, Aurangabad.

.....Applicant

VERSUS

The State of Maharashtra.

.....Respondent

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Advocate for Applicant : Mr. M. A. Latif
APP for Respondent-State : Mr. S. B. Narwade
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CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
19-03-2021**

**Date of Pronouncing The Order :
08-06-2021**

ORDER :

1. Criminal Applications No.200 of 2021 and No.197 of 2021 have been filed by the original informant for Assist to learned Additional Public Prosecutor. There is no hurdle in allowing them.
2. Said applications are allowed and disposed of accordingly.
3. The applicants in Bail Applications No.101 of 2021, No.1466 of 2020 and No.1484 of 2020 are seeking regular bail under Section 439 of the Code of Criminal Procedure. Applicants in Bail Applications No.101 of 2021 and 1466 of 2021 are in jail since 03-03-2018 and applicant in Bail Application No.1484 of 2020 is in jail since 10-05-2018, in connection with Crime No.302 of 2017, registered with Cantonment (Chhawani) Police Station, District Aurangabad, for the offence punishable under Section 302, 120-B,

201 read with 34 of the Indian Penal Code.

4. Heard learned Advocate Mr. S. S. Jadhav, Mr. M. A. Latif, Mr. A. K. Bhosle for applicants and learned Additional Public Prosecutor Mr. S. B. Narwade well assisted by Mr. N. V. Gaware for respondent-State.

5. All the learned Advocates appearing for the respective applicants seeking bail have submitted that the case rests on circumstantial evidence. Out of 13 co-accused, 09 accused have been released on bail and, therefore, on the ground of parity also they deserve to be released on bail. Name of applicant Shaikh Ashfaq Shaikh Ishaq is not appearing in the First Information Report. All of them have right for speedy trial which is not forthcoming though the charge-sheet came to be filed on 31-05-2018. As regards him there was no personal enmity with the deceased. As regards the other two applicants are concerned, it is stated that there is discovery of two pipes of iron from one Shaikh Sartaj @ Ajji Dada Shaikh Nasir. Even the perusal of the First Information Report would show that it was lodged on the basis of suspicion due to the earlier transactions or disputes between the deceased and the accused persons. The informant is the son of the deceased. So also

the statement of the wife of the deceased has been recorded in which she has stated that Athahar Khan, Shaikh Latif and Jahangir Khan had lodged false complaint against the deceased and, therefore, deceased was in Harsool Jail for some time. In the meantime, those persons used to go to the house of deceased and by giving threats they had demanded amount of Rs.15,00,000/- as ransom. She had lodged report in respect of the same to Cantonment Police Station. Those persons were intentionally lodging false cases against the deceased in order to defame him so also he should suffer financially. With this background it is contended that the present applicants have committed murder. However, taking in to consideration the evidence that has been collected, they need not be kept behind bar. They are ready to abide by the terms of the bail. In fact, taking into consideration whatever the evidence is collected against Shaikh Sartaj @ Ajji Dada Shaikh Nasir, he was granted temporary bail by this Court on 16-09-2020.

6. Per contra, the learned Additional Public Prosecutor Shri S. B. Narwade well assisted by learned Advocate Mr. N. V. Gaware for the informant vehemently submitted that though the case might be

resting on circumstantial evidence, yet the circumstances those have been put forward would definitely show that there is substantial evidence against the present applicants. The applicants were part of the entire group which was acting with animosity against the deceased. Deceased was dealing in the business of sale and purchase of plots. At the time of incident, there was dispute in respect of certain land. The said enmity was going on since five to six years prior to the date of the First Information Report. The accused persons had given threat to kill the deceased. The dead body of deceased was found around 02.00 a.m. on 28-12-2017 near Prachi Garage on Cantonment road. He was returning after attending marriage ceremony of the niece of his friend. He was on his motorcycle. When the dead body was found, the motorcycle was there but it had damages to the left side. One iron rod was found just near the Holy Cross School which was near the spot. It had blood stains. The said rod was purchased from the shop of one Shahnoorkhan Sarwarkhan. He has identified the said pipe and it was discovered that accused Shaikh Ashfaq had purchased it from his shop. Further statement of Shaikh Ashfaq Shaikh Gaffar would show that he had made three pieces of iron pipe which was originally around ten feet and it was divided in almost three feet each. On the

request of his friend Shaikh Ashfaq, he had also put some spots on the said pipes which will make grip (word used is, "छर्रे मारुन दिले"), and then there is discovery at the hands of these applicants. If we consider the post mortem report, especially Column No.17, then it can be seen that deceased had in all 13 injuries and his probable cause of death is, "head injury". Definitely the death is homicidal and brutal and, therefore, the applicants need not be released on bail.

7. At the outset, it can be seen that the present applicants are in jail for a considerable long time. The charge-sheet is already filed and, therefore, their further physical custody is not required for the purpose of investigation. The evidence that is collected against them is now required to be seen. Prosecution is also accepting that the case is resting on circumstantial evidence. Role attributed to each of the applicant would show that they have very less role to play. If we go by the First Information Report, it was initially against five persons. One Athahar Khan, Jahangir Khan, Shaikh Latif and Abdul Irshad against these four persons police have submitted report under Section 169 of the Code of Criminal Procedure. One Mujtaba Rafiq @ Mustafa @ Akram Pahelwan Shaikh Abdul Wahab

appears to have been released on bail under Section 167 (2) of the Code of Criminal Procedure. Thus, if we consider the First Information Report itself then the names of the present applicants are not appearing. There is no eye-witness to the incident. The dead body was found at about 02.00 a.m. Deceased had left the house by informing his wife and son that he was going to attend the marriage ceremony. The statements of witnesses would show as to how there was financial dispute between accused No.1 and the deceased. As earlier stated that the statement of the wife of deceased would disclose some animosity between the deceased and those four persons who have been now released under Section 169 of Code of Criminal Procedure. None of them are saying that there is direct enmity between each of the present applicants. Supplementary statement of one Sayyad Shafiuddin dated 16-03-2018 would rather say that there was absolutely no dispute between deceased and Mustafa Akram and other four persons. Though the death appears to be homicidal, yet taking into consideration the evidence in the form of alleged recovery and statement of pipe seller and the person who had cut the pipe into three pieces, there appears to be no other evidence. Under such circumstance, when there appears to be hurdles in having a speedy trial taking into

consideration the pandemic situation, it would take very long time to conclude the trial. The applicants need not be kept behind bar, they deserve to be released on bail. Hence, following order.

ORDER

- 1) Bail Applications are hereby allowed.
- 2) Applicants/ accused Shaikh Sartaj @ Ajji Dada s/o Shaikh Nasir, Shaikh Ashfaq s/o Shaikh Ishaq and Shaikh Bashir @ Munna Bochra s/o Shaikh Karim, in Special Case No.280 of 2018, pending before learned Additional Sessions Judge, Aurangabad, be released on P.R. of Rs.1,00,000/- each (one lakh) with one solvent sureties of like amount.
- 3) The applicants/accused shall not tamper with the evidence of the prosecution in any manner.
- 4) They shall not indulge in any criminal activity.
- 5) Before submission of bail papers, the applicants/accused should give complete address of their residence with their mobile numbers. So also they should comply with the requirements under paragraphs No.12 (1) to (6) of Chapter I of Criminal Manual, whichever are applicable.
- 6) Bail before Trial Court.

7) Criminal Application No.2210 of 2020 in BA No.1466 of 2020 filed for temporary bail is disposed of as main application is granted. Criminal Application No.200 of 2021 in BA No.1484 of 2020 and Criminal Application No.197 of 2021 in BA No.1466 of 2020 are allowed and disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-