

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1370 OF 2021

AKSHAY S/O KHANDERAO JAGTAP
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for Applicant : Ms. Rashmi S. Kulkarni
APP for Respondent-State : Ms. Vaishali Patil-Jadhav
.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 09-12-2021.

ORDER :

1. Present application has been filed under Section 439 of the Code of Criminal Procedure. Applicant has been arrested in connection with Crime No.248 of 2019, by Kopargaon City Police Station, District Ahmednagar, for the offence punishable under Section 307 of the Indian Penal Code and under Section 3/25, 7/25 of the Arms Act.
2. Heard learned Advocate Ms. Rashmi S. Kulkarni and learned APP Ms. Vaishali Patil-Jadhav for respondent-State.
3. It has been submitted by learned Advocate for the applicant that this Court had rejected the bail application filed by the present applicant i.e. Bail Application No.229 of 2021 on 04-05-2021 by giving detailed order, however, at that time the ballistic report was awaited.

Now the ballistic report has been received and it states that the empty in exhibit (3) is a fired 7.65 mm pistol cartridge case without primer cap and, therefore, it is unsuitable for ballistic comparison. Therefore, when the ballistic report appears to be not supporting the prosecution, the applicant deserves to be released on bail, who came to be arrested on 02-06-2020. Another ground which prosecution had projected was that the applicant is history-sheeter, however, the applicant has been acquitted in one of the offence and in another FIR he has not been named. Further, recently the father of the applicant had met with an accident which has caused serious injury to his leg. The applicant needs to take care of his parents.

4. Per contra, the learned APP strongly opposed the application and submitted that in all three exhibits were referred for the opinion of Ballistic Expert. One was country-made pistol without magazine, another was empty magazine of a pistol, and third was KF 7.65 mm pistol empty without primer cap. When the Ballistic Expert had tested the pistol, it was found that it was in working condition. It was capable of chambering and firing 7.65 mm pistol cartridges. The residues of fired ammunition-nitrite was detected in the barrel washings of exhibit (1). As regards exhibit (2), it could be seen that

the empty magazine of the pistol, readily seats in magazine cavity of country-made pistol in exhibit (1). The only thing which has been stated about exhibit (3) is that since it was without primer cap, it was unsuitable for ballistic comparison. Therefore, it cannot be stated that ballistic report is against the prosecution. The offence that has been committed under Section 398 of the IPC was serious offence and, therefore, now no leniency deserves to be shown to the applicant.

5. It is to be noted that in earlier order passed by this Court on 04-05-2021, all the details have been mentioned as regards what was the case of the prosecution, what were the submissions on behalf of the applicant and the reasons have been given as to why the earlier application was rejected. At that time also the charge-sheet was perused by this Court. Except the ballistic report, there is no change in the circumstance. This Court, therefore, does not want to reproduce the reasons given in the earlier order, but they are in fact relied here also.

6. Now, as regards the Ballistic Expert's opinion is concerned, it is specifically stated that the Exhibit 1 country-made pistol was in working condition and it showed that it was used for firing prior to

its receipt in the laboratory. The empty magazine also fits in the cavity of exhibit (1). The recovery of the weapon is under Section 27 of the Indian Evidence Act and, therefore, now also no case is made out to exercise the discretionary powers of this Court to release the applicant on bail. Hence, the application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-