

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

BAIL APPLICATION NO.19 OF 2022

Harpreet Singh @ Monty Singh
S/o Narendra Singh
Age: 34 years, Occu.: Agriculture and
Business,
R/o. Yatri Niwas, Gate No.2,
Near Gurudwara, Nanded,
Taluka and District Nanded.

..Applicant
(Accused No.2 in FIR /
Charge-sheet)

VERSUS

The State of Maharashtra
Through the Officer Incharge,
Ardhapur Police Station,
Taluka Ardhapur,
District Nanded.

..Non-Applicant /
Respondent
(Prosecution)

...
Advocate for Applicant : Shri R.S.Deshmukh, Senior Counsel a/w.
Shri Vishal Chavan i/b. Shri Devang R. Deshmukh
APP for Respondent : Shri G.O.Wattamwar

...
CORAM : M.G.SEWLIKAR, J.

RESERVED ON : 4th March, 2022

PRONOUNCED ON : 16th March, 2022

ORDER :-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No.0122 of 2021, registered with Ardhapur Police Station, Dist.Nanded, under Sections 302, 364, 147, 148, 149 of the Indian Penal Code.

2. Facts in brief are that informant – Mohammad Javed S/o. Mohammad Najir is the brother of Abdul Jabbar S/o. Mohammad Najir (since deceased). Deceased Abdul Jabbar was working with Sayyad Latif Sayyad Hussain as a Driver on his Truck.

3. On 20th May 2021, the deceased was repairing the Truck in front of Mazid Motor Garage, Dhanegaon. Sayyad Latif Sayyad Hussain was also present there. At about 02:00 p.m. to 02:30 p.m., Monty Singh (applicant) came there in a car. Accused Mazhar Khan Navid Khan, accused Shaikh Wasim Akram S/o.Mohd.Rauf and accused Sushant Prabhakar Bhujbale also came there on two Motorcycles. It appears from the FIR that deceased Abdul Jabbar had taken loan from Khalsa Financewala. There was altercation between the accused and the applicant on one hand and Abdul Jabbar on the other hand. Sayyad Latif requested the applicant and other accused to take Rs.10,000/- which was rejected by the applicant and other accused. Sayyad Latif informed the informant on 21st May 2021 in the morning that deceased Abdul Jabbar was forced to sit in a car and abducted by the applicant and other accused.

4. On 21st May 2021 at 09:00 a.m., informant got a message from Ardhapur Police Station that dead-body of deceased Abdul

Jabbar was found in the field of Naroba Taterao Kadam at village Bamani, he had sustained injuries on his person and it appeared to be a homicidal death. When the informant went there, he found that the deceased had injuries on his legs, abdomen, chest, back and on his face. On these allegations, FIR came to be lodged on the basis of which Crime No.0122 of 2021 came to be registered under the aforesaid Sections.

5. Heard Shri R.S.Deshmukh, learned Senior Counsel alongwith Shri Vishal Chavan, learned counsel instructed by Shri Devang R. Deshmukh, learned counsel for the applicant and Shri G.O.Wattamwar, learned APP for the respondent.

6. Shri Deshmukh, learned Senior Counsel for the applicant submitted that the applicant does not have business of finance. Randeepsingh Ishwarsingh Sardar does the business of financing. He does money lending business under the name Hazuri Khalsa Finance. He submitted that the applicant has been arrested on account of mistaken identity. He submitted that identification parade has not been held to show that the applicant was the person who is Monty Singh Financewala. He submitted that statement of car owner Babansingh Ganpatsingh Sapure came to be recorded in which he has stated that Mazhar Khan had come

to take the car of Babansingh Sapure. He submitted that Babansingh does not mention the name of the applicant as the person who had taken his car. He submitted that this clearly shows that out of mistaken identity, the applicant has been wrongly arrested.

7. Shri Wattamwar, learned APP for the respondent submitted that in the Police papers the statement of Babansingh Sapure shows that applicant had been to Bababsingh for taking the car. He further submitted that the statement of Sayyad Latif shows that Monty Singh i.e. applicant had abducted deceased Abdul Jabbar in the car. Statement of Naroji Taterao Kadam shows that he had seen Monty Singh (applicant) on 20th May 2021 at 07:00 to 07:30 p.m. with 5 to 6 persons. He had seen one person being beaten by Monty Singh and other persons. He submitted that for the first time in the bail application, applicant has taken defence of mistaken identity.

8. I have considered submissions of learned Senior counsel for the applicant and learned APP for the respondent.

9. When the applicant was arrested, he did not raise this issue of mistaken identity. He could have raised this issue at the time

when he was arrested and at the time when he was produced before the learned Magistrate for remand. He did nothing of this sort. If he had raised this issue of mistaken identity, the Investigating Officer could have carried out the investigation in that direction. Since he did not raise this issue, the Investigating Officer had no reason to conduct the investigation in that direction. Therefore, there was no occasion for holding of identification parade either.

10. Statement annexed with the charge-sheet submitted by the applicant alongwith application shows that Mazhar Khan Navid Khan had been to Babansingh Sapure for taking his car. Police papers show that in the statement of Babansingh Sapure, it is stated that Monty Singh (applicant) had been to Babansingh for taking his car. Considering this variation, record of the trial Court was called. The statement of Babansingh Sapure in the record of the trial Court shows that Monty Singh (applicant) had been to Babansingh for taking the car. In view of this variance, during the trial only it will be clear which statement is correct. At this *prima-facie* stage, it appears that there was no mistaken identity.

11. In the statement under Section 27 of the Evidence of Act,

accused Shaikh Wasim Akram has mentioned the name of the applicant Harpreet Singh @ Monty Singh S/o. Narendra Singh as the person who had abducted deceased Abdul Jabbar in the car. Similar is the statement of accused Sushant Bhujbale. These statements cannot be used against co-accused. However, just to show that there was no mistaken identity, these statements have been referred.

12. *Post Mortem* report shows that the contusions were of the size of 45 x 10cm, 80 x 5cm, 46 x 3cm. This shows that the deceased was beaten black and blue by the applicant and other accused. In this view of the matter, I am not inclined to release the applicant on bail. Hence, the order :-

ORDER

- i) Bail Application is dismissed.
- ii) It is clarified that the observations made in this order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

**(M.G.SEWLIKAR)
JUDGE**