

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.176 OF 2022

UDHAV S/O SOPAN DARADE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. S. G. Jadhavar
APP for Respondent-State : Ms. Vaishali Patil Jadhav
Advocate for Assist to APP : Mr. R. N. Chavan h/f Mr. V. A. Bagdiya

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**CRIMINAL APPLICATION NO.622 OF 2022
IN BA/176/2022**

PRADEEP KUNDLIKRAO KUTE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. R. N. Chavan h/f Mr. V. A. Bagdiya
APP for Respondent No.1-State : Ms. Vaishali Patil Jadhav
APP for Respondent No.2 : Mr. S. G. Jadhavar

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 07-03-2022

PER COURT :

1. Criminal Application No.622 of 2022 has been filed for assist to learned APP. Said application stands allowed and disposed of.
2. The applicant is claiming bail under Section 439 of Cr.P.C. in connection with Crime No.05 of 2020, dated 10-01-2020, registered with Aundha (Nagnath) Police Station, District Hingoli. For the offence

punishable under Section 302, 143, 147, 148, 149, 323 of IPC. It will not be out of place to mention here that his earlier Bail Application No.1212 of 2020 for regular bail, was rejected by this Court on 07-12-2020. It is to be further noted that the charge-sheet was filed in the case on 21-03-2020, that means, the charge-sheet was before this Court when this Court had rejected the bail application on 07-12-2020. Therefore, question was asked to the learned Advocate for the applicant as to what is the change in the circumstance. He then states that the C.A. reports have been filed later i.e. on 28-01-2021 and also the CDR and SDR of the mobile phones. The Chemical Analysis report shows that no blood was detected on the clothes of the applicant, that is the blood group could not be ascertained, and as regards the tower location of the mobile is concerned, even the co-accused were not present around the spot as well as this applicant also, and therefore, the applicant deserves to be released on bail. There is no progress in the sessions case. When the bail is Rule and not the jail, keeping him in jail would amount to a punishment before trial. He is ready to abide by the terms of the bail. Some of the co-accused have been released by this Court on bail, and therefore, on the ground of parity also the applicant deserves to be released on bail.

3. The learned APP well assisted by learned Advocate Mr. R. N. Chavan holding for Advocate Mr. V. A. Bagdiya for the informant strongly opposes the application and submits that the basic nature of the report of a Chemical Analyser is perverted in nature and not the substantial one. What has been stated in the report is that the human blood was detected. The blood group could not be ascertained, cannot be the ground in favour of the applicant. So also the CDR report will not give any advantage to the applicant when there are eye-witnesses to the incident.

4. Perusal of the earlier order passed by this Court on 07-12-2020 would show that this Court had seen the charge-sheet and had opined that the further physical custody of the applicant is not required for the purpose of investigation, and therefore, the evidence what was collected against the applicant, was considered. The recovery from the present applicant was in respect of the knife. There are eye-witnesses to the incident. The informant and his brother are also the eye-witnesses. There are also independent witnesses. Statements of witnesses were considered by this Court and also the inquest panchanama and the post-mortem report. The post-mortem report gives 11 surface injuries which are stated to be

ante-mortem. Out of this 11 injuries, 09 are stab injuries. There were also the internal injuries those we were noted by this Court. Further, the fact of release of two accused by this Court and the ground of parity was pressed by the applicant at that time also, and it was specifically stated that the role attributed to those persons was different than the present applicant.

5. Now as regards the Chemical Analysis report is concerned, what has been detected on the clothes of the applicant, is the human blood. Unfortunately the blood group appears to be not found conclusively or could not be ascertained. Ultimately the report of the Chemical Analysis would be corroborative in nature and independently taken lead to a conviction. It will have to be read along with the oral evidence, post-mortem report and other evidence that would be adduced. Same is the case with the tower location. Merely because at the time when this Court had rejected earlier bail the chemical Analysis report and CDR was not available, that will not give any advantage to the present applicant.

6. As regards the progress of the sessions case is concerned, this Court cannot have a blind eye towards the fact that due to pandemic situation and the standard operating procedures, those were

imposed upon the Trial Courts by this Court itself, the trials could not proceed further. With the normalization of the situation, now the momentum has been gained and the work of recording of evidence would start. For that purpose, no advantage is required to be given to the applicant. Hence, application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.