

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

942 BAIL APPLICATION NO.365 OF 2022

SWAPNIL PRALHAD KHADE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Andhale Sandip Ramnath
APP for Respondent – State : Mr. V. S. Badakh

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 19.04.2022

ORDER :-

1. The applicant has been arrested on 17.02.2022 by Jamkhed Police Station, Dist. Ahmednagar in connection with Crime No.51 of 2022 for the offence punishable under Section 307 of Indian Penal Code. He has filed present application under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. S. R. Andhale for the applicant and learned APP Mr. V. S. Badakh for the respondents – State. In order to cut short it can be said that both of them have made submissions in support of their respective contentions.

3. It will not be out of place to mention here that on the last occasion, the matter was adjourned on the count of CA report is not

received and learned APP undertook that he will try to produce CA report within two weeks, however, today, the learned APP submitted that he had not received the CA report uptill now. This Court cannot wait for such indefinite period just for the sake of the CA report.

4. Perusal of the FIR would show that it has been lodged by Sau. Rani Bapu Khade on 16.02.2022 and it came to be registered at 00.28 hours on 17.02.2022. It is in respect of the incident that had allegedly taken place at 3.30 p.m. on 13.02.2022 and, therefore, there appears to be apparent delay in lodging the FIR. Though the learned APP is contending that since the informant and the other three persons were admitted to hospital, they were discharged only on 16.02.2022 and, therefore, it cannot be said that there is delay in lodging the FIR. In this connection, it can be seen from the police papers that statement of the son of the informant as well as statement of the husband of the informant would show that they were definitely present in the village when the incident had taken place. They could have filed FIR. It is not at all necessary that the injured or the victim only should file the FIR.

5. It has been contended that after the informant and her daughter had come back to home from their field, they had seen applicant passing near their house. It is then stated that the present applicant is the

relative of the informant. The daughter of the informant brought water from cement water tank (which is as per the contents of the FIR inside the house). She brought the water, which was consumed by the informant by sitting outside the house. Thereafter, her daughter and nephew and niece of the informant also consumed the water from the same tank. Then after 10 to 15 minutes, the daughter of the informant as well as the informant fell giddiness. Then she saw the water, which was of white colour and she raise suspicion. She then states that in the earlier year i.e. 2021, there was dispute between the present applicant and her family on the count of cutting of raw mangoes and at that time, the applicant had threatened that if anybody picks raw mangoes, then he would put some poisonous substance in the drinking water and would kill them. Informant then made a phone call to her brother. All of them then taken to Rural Hospital, Jamkhed and then shifted to Shiladip Hospital, Jamkhed.

6. The police papers raise so many questions. The spot panchanama appears to have been carried out after a period of 5 days and even the sample has been taken, but the situation of the spot is more important. There appears to be only one entrance and in the first room itself at the north east corner, the position of the water tank has been shown. There is no mention about the lid over the tank and then it is mentioned that

in the middle room, there were some iron sheets missing on the roof, however, there is no mention about the height of the wall, yet it is mentioned that one can easily go inside and come outside from above missing iron sheets. So also, the door was not been able to close complete. First of all, it is to be noted that no other description has been given and as regards the front door is concerned, its description is also not given. If we consider it with the FIR, there is no damage to the front door and almost all the persons from the house were outside and in the normal course, they would have put lock to the house, but reference of the same can be found in the statement of the son of the informant and it is stated that his mother i.e. informant had put lock to the front room and then had come to the field along with his sister. Reference of the same is also in the statement of the husband of the informant and also statement of the daughter. Now, in the statement of the daughter, she has made improvement that applicant had directly landed in the middle room by jumping and she had seen him going by jumping. She then states that there is Papaya tree near the said place and she thought that he would have picked Papaya from tree. In the spot panchanama there is no mention of Papaya tree near the middle room. Another fact that is worth mentioning is the injury certificate issued by Rural Hospital, Jamkhed, wherein it has been stated about the alleged history of

accidental consumption of water mixed with Rogar like substance and it is stated that the nature of the injury is simple, however, referred to Civil Hospital, Ahmednagar for observation. The injury certificate issued by Shiladeep Hospital do not show the nature of the injury, however, the remark column say that “caused by O.P. contaminated water”. The contamination of the water can be of different kinds.

7. Therefore, with this kind of evidence, the applicant need not be kept behind bar. By imposing conditions, he needs to be released on bail.

ORDER

- I) Application stands allowed.
- II) The applicant – Swapnil Pralhad Khade, who has been arrested in connection with Crime No.51 of 2022 registered with Jamkhed Police Station, Dist. Ahmednagar for the offence punishable under Section 307, be released on P. R. Bond of Rs.30,000/- with two sureties of Rs.15,000/- each.
- III) The applicant shall remain present before the Investigating Officer on every Monday and Thursday between 10.00 a.m. to 12.00 noon, till filing of charge-sheet.
- IV) He shall not tamper with the evidence of the prosecution in any manner.

- V) He shall not indulge in any criminal activity.
- VI) Bail before the trial Court.

[SMT. VIBHA KANKANWADI, J.]

scm