

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

BAIL APPLICATION NO.473 OF 2022

Ashok @ Ashkar @ Kirtan S/o. Chaparya Kale ..Applicant

VERSUS

The State of Maharashtra ..Respondent

...
Advocate for Applicant : Mr.Wajeed Ahmed Shaikh
APP for Respondent : Mr.V.S.Badakh

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 26th April, 2022

DATE OF PRONOUNCING ORDER : 5th May, 2022

ORDER :-

1. Present applicant has been arrested on 2nd November, 2020 in connection with Crime No.0282 of 2020, registered with Purna Police Station, District Parbhani, for the offence punishable under Sections 302, 120-B read with Section 34 of the Indian Penal Code (IPC).

2. Heard Mr.Wajeed Ahmed Shaikh, learned Advocate for the applicant and Mr.V.S.Badakh, learned APP for the respondent.

3. It has been vehemently submitted by the learned Advocate on behalf of the applicant that investigation is complete and charge-sheet is filed on 29th January, 2021. The applicant is behind bar since considerable time and the trial has not yet begun. Perusal of the First Information Report (FIR)

lodged by one Kishan Rangrao Gaikwad in respect of murder of his son Siddharth would show that Siddharth was assaulted by one Shesha Kale with knife. It was stab injury to the right side of the chest. In the FIR, it is further stated that the present applicant had picked up an axe which was lying in front of the house/hut of the informant and he ran behind Siddharth as Siddharth tried to run after Shesha Kale had assaulted him. After running for a distance, Siddharth fell down and then it is stated that the present applicant had assaulted by an axe on the chest of Siddharth but Siddharth raised his both hands resulting in injury to his left hand. Therefore, even if considering this injury to his hands, offence under Section 302 of the Indian Penal Code cannot be said to have been made out against the applicant. If we consider the post mortem report then column 17 gives only two injuries; one is vertically placed stab wound of size 6x2xDeep to the lungs elliptically in shape of stab wound and the second one is CLW over left forearm on lower 1/3rd area near wrist joint of size 3x2x0.5cm reddish in colour. The cause of death has been given as "due to Hemorrhagic shock due to stab injury". Therefore, the applicant is not the author of the fatal injury. Statements of the witnesses are on the same lines. Further evidence against the applicant is discovery under Section 27 of the Indian Evidence Act and he has discovered the axe and his

clothes. The applicant is ready to abide by the terms of the bail as his act cannot be termed to be a murder.

4. Per contra, the learned APP for the respondent opposed the application and submitted that apart from the aforesaid evidence, which has been referred by the learned Advocate appearing for the applicant, it is to be noted that there was no enmity between the informant, the deceased and the applicant. The deceased was infact the brother-in-law of the present applicant, however, because of enmity due to domestic reason, it appears that the accused persons had come on the unfortunate day with their common intention. No doubt even Section 120-B of the IPC has been invoked, yet Section 34 of the IPC is invoked in this case. Accused No.1 - Shesha Kale was armed with the knife and the present applicant picked up an axe belonging to the informant, which was lying outside the hut, and then with an intention to cause further injury near the heart of the deceased Siddharth, the blow was given, however, the deceased resisted the same by his hands and therefore, the said blow landed on the left hand wrist of the deceased. The intention was then clear and it can also be seen from the statements of the witnesses that with ill intention the accused persons had come. The statements of those witnesses under Section 164 of the Code of Criminal Procedure are also supporting the said fact. The

discovery of axe and the opinion by the Medical Officer that with such weapon injuries appearing on the deceased are possible especially injury No.2 also. Further it has been pointed out that the present applicant has criminal history and in all six offences are registered against him. Therefore, he does not deserve to be released on bail.

5. Learned Advocate for the applicant submits that the applicant has been acquitted in Crime No.24 of 2012 for the offence punishable under Sections 302, 307 read with Section 34 of the IPC, however, he has confirmed that other offences/cases are pending.

6. It is to be noted that the applicant is accused in Crime No.38 of 2011 for the offence punishable under Sections 457, 380 of the IPC, Crime No.67 of 2011 for the offence punishable under Sections 457, 379, 380 of the IPC, Crime No.332 of 2020 for the offence punishable under Sections 395, 397 of the IPC and Crime No.337 of 2020 for the offence punishable under Section 379 read with Section 34 of the IPC, and all these offences are stated to be registered against him with Mundrup Police Station, District Solapur. Another offence against the present applicant has been registered vide Crime No.222 of 2019 with Purna Police Station in Parbhani District for the offence

punishable under Sections 366, 344, 376(2)(N), 506 of the IPC. Thus, the offences in which the cases against the present applicant are still pending are definitely serious. The cases are pending against him since 2011 and it appears that still even recently he has been involved in another crime. There is no improvement in the applicant. Therefore, possibility of the applicant getting involved in similar serious offences after his release on bail cannot be ruled out.

7. As regards the merits of the case are concerned, there are eye-witnesses to the incident and thus, eye witnesses have categorically stated that intention of the applicant was to cause injury to his heart by an axe. There is domestic dispute and though the deceased was relative, the applicant has not abstained himself from causing injury to the deceased. No doubt, the informant appears to have developed further story that accused Shesha Kale had fired from a pistol/gun but neither the post mortem report states any such bullet injury nor the seizure of any such gun has been done. But that does not give advantage to the applicant for the release. When there is evidence against the present applicant, he does not deserve to be released on bail. Hence, Bail Application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE