

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.515 OF 2022

RAHUL S/O SANJAY KALE
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. S. S. Rathi, Advocate for applicant.
Mr. B. V. Virdhe, APP for the respondent – State.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 22.04.2022

ORDER :-

1. Present applicant has been arrested on 17.10.2020 in connection with Crime No.471 of 2020 registered with Hingoli City Police Station, Dist. Hingoli for the offences punishable under Sections 302, 341, 120-B, 143, 147, 148, 149, 201 of the Indian Penal Code and under Section 4/25 of the Indian Arms Act and under Section 135 of Maharashtra Police Act. He has filed present application for bail under Section 439 of the Code of Criminal Procedure.

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

3. Informant is the wife of Sunil Chavan (since deceased). Sunil Chavan is hereinafter referred to as deceased Chavan. On the date of incident i.e. on 15.10.2020 at 7.30 p.m., there were celebrations on account of birthday of son of Kachru Baban Chavan. All including accused Ajesh @ Ajay Bansi Chavan were dancing. He was dancing with a sword in his hand. At about 8.00 to 8.30 p.m. accused Sachin Jilani Pawar took deceased Chavan with him on the pretext of giving Tobacco/Gutkha. Deceased Chavan accompanied accused Sachin Pawar. Co-accused Sunil Chavan was also with them. Informant was looking at the Co-accused Sunil Chavan. All of a sudden accused Ajesh @ Ajay Chavan stabbed deceased Chavan in the chest by means of a sword. Accused Sachin Pawar held both the hands of deceased Chavan from behind. Accused Ritik Bharat Chavan assaulted on the back of deceased Chavan by means of a knife. Accused Arjun Baban Kale assaulted on the hand of deceased Chavan by means of a Gupti. Accused Sunil Chavan and present applicant assaulted deceased Chavan by means of stone and iron rod respectively. Deceased Chavan was shifted to the hospital where he was declared dead on arrival. Accordingly, Crime No.471 of 2020 came to be registered with Hingoli City Police Station, Dist. Hingoli under Sections 302, 120-B, 143, 147, 148, 149, 341, 201 of the Indian Penal Code, Section 4/25 of the Arms Act and Section 135 of the Maharashtra

Police Act.

4. Charge-sheet is filed. On perusal of the postmortem report, it is seen that deceased Chavan had incised stab injuries and incised wound and abrasion. Role of the applicant as discerned from the FIR and the statement of the witnesses is that he had assaulted deceased Chavan by means of a iron rod. Charge-sheet also shows that opinion of Medical Officer was solicited as to whether injury No.6 can be caused by iron rod. Medical Officer has opined that this can be caused by iron rod. Accused Sunil Chavan alleged to have inflicted injury by means of stone. On perusal of the charge-sheet, it appears that the role of the applicant is of assaulting deceased Chavan by means of a iron rod. Fatal blow is given by other accused and not by the applicant. While deciding application for bail, role of the applicant needs to be considered as held by the Hon'ble Supreme Court in the case of ***Prashant Singh Rajput Vs. State of Madhya Pradesh (AIR 2021 Supreme Court 5004)***. In the FIR it was stated that present applicant and co-accused Sunil Chavan had assaulted the husband of the informant with iron pipe, stone on his back stomach and legs, however, it has been further clarified in the statement under Section 161 of the Code of Criminal Procedure that said Rahul Sanjay Kale and Sunil Punjaji Chavan had assaulted deceased Chavan by stone and iron pipe on the right leg of the deceased and then it is stated

that they had also assaulted him on his chest, stomach, legs, back with stone and pipe. In both these statements, it was not clarified as to who was assaulting by iron pipe and who was by stone. The postmortem report, column No.17, states in all 9 injuries, out of them two are stab injuries, which cannot be attributed to the present applicant. So also, injury Nos.3, 4 and 5 are incised injuries. The weapons seized were referred to the medical officer and he is attributing injury Nos.1 and 2 with the weapon sword, which is not alleged to have been used by the present applicant. Further, he is also opining that injury Nos.1, 2, 3, 4, 5 and 7 in column No.17 of the postmortem report are attributed by dagger. It was also not alleged to be used by the present applicant. Another dagger of yellow colour would have caused injury Nos.3, 4, 5 and 7 and the opinion is same. For iron rod, only injury mentioned at No.6 in column No.17, which is lacerated injury – present over right leg lateral aspect below 5cm right knee joint of size 4cm x 1cm x subcutaneous margins irregular, red, would be attributable. So, it is the only injury which can be said to have been caused by the iron rod, which was allegedly used either by this applicant or by Sunil Punjaji Chavan. Said Sunil Punjaji Chavan has been released by this Court (Coram : M. G. Sewlikar, J.) on 08.02.2022 in Bail Application No.1674 of 2021 and, therefore, this applicant being similarly situated to Sunil

Punjaji Chavan also deserves to be released on the same conditions.

5. Only reference therefore can be made that there are eye witnesses to the incident and they are attributing the same weapon to the present applicant. The iron rod as aforesaid has been seized and, therefore, following order is passed :-

ORDER

- I) Bail Application is hereby allowed.
- II) Applicant – Rahul s/o Sanjay Kale, who has been arrested in connection with Crime No.471 of 2020 registered with Hingoli City Police Station, Dist. Hingoli for the offences punishable under Sections 302, 120-B, 143, 147, 148, 149, 341, 201 of Indian Penal Code, Section 4/25 of the Arms Act and Section 135 of the Maharashtra Police Act, be released on P. R. Bond of Rs.30,000/- with one solvent surety in the like amount.
- III) He shall not tamper with the evidence of the prosecution in any manner.
- IV) He shall not indulge in any criminal activity.
- V) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI, J.]