

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

BAIL APPLICATION NO. 995 OF 2022

1. Shaikh Ismail @ Choli Mohammed Ali
Age: 20 years, Occu.: Labour,
2. Shaikh Mohammed Kaif Mohammed Gous
Age: 20 years, Occu.: Labour,

Both R/o Farooq Nagar, Nanded,
Tq. & Dist. Nanded

..APPLICANTS

VERSUS

State of Maharashtra
Through Police Station Loha,
Dist. Nanded

..RESPONDENT

....

Mr. B.N. Gadegaonkar, Advocate for applicants
Mr. S.P. Sonpawale, A.P.P. for respondent - State

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CORAM : R.G. AVACHAT, J.
DATE : 11th AUGUST, 2022

PER COURT :

1. This is an application for bail under Section 439 of Code of Criminal Procedure. The applicants have been arrested in connection with Crime No. 232 of 2021 registered with Loha Police Station, Dist. Nanded for the offences punishable under Sections 302, 394, 397, 411 and 201 read with Section 34 of the Indian Penal Code.

2. Heard. Perused the First Information Report ("F.I.R.") and related police papers.

3. The F.I.R. has been lodged by brother of the deceased on 11th November, 2021. It has been averred in the F.I.R. that the informant's elder brother – Ravi had informed him on his cell phone at 01.30 a.m. on 10th November, 2021 that three unknown persons had intercepted him opposite the hotel of Kalaskar at Loha. One of the three stabbed him with a knife in his stomach. The another one relieved him of his cell phone worth Rs.10,000/-. Before they fled, again one of them assaulted on his thigh with a knife blow. The informant reached the place within minutes of the information having been received. He then rushed the victim to the hospital of Dr. Kagvate. After having taken first aid there, the victim was shifted to Apeksha Hospital, Nanded. It has also been averred therein that the victim was experiencing severe pain in his stomach. After eighteen days of the incident he breathed his last.

4. On investigation, charge-sheet has been filed. Learned A.P.P. would submit that the Call Data Record indicates the tower location of the applicants was in the vicinity of scene of offence. The applicants and co-accused, on the same night, had committed similar offence against one Premanand Kamble. His statement has also been recorded. Learned A.P.P.

advertises attention of this Court to the statement of Premanand. He would further submit that the knife used in the commission of offence is seized. Medical Officer's opinion was solicited. The opinion indicates that the injury suffered by the deceased might have been caused by the weapon seized. The cell phone of deceased has also been seized. According to him, it is a serious offence. The applicants don't deserve grant of bail.

5. The F.I.R. has been lodged by brother of the deceased. The informant had not witnessed the incident. The deceased had informed him that the assailants were three in number. They had their faces covered. One of them was sporting yellow shirt. The applicants and co-accused came to be arrested one month after the alleged incident. Before their arrest, the victim had passed away. However, on arrest of the applicants, they were not subjected to test identification parade for identification by another victim – Premanand Kamble. The cell phone has been recovered from one Shamshad. The seized knife appears to have no blood stains thereon. Suffice it to say that there is little or no material to connect the applicants with the offence in question.

6. In view of above, the application deserves to be allowed. Hence I pass the following order :-

ORDER

(I) The bail application is allowed.

(II) The applicants be released, in connection with Crime No. 232 of 2021 registered with Loha Police Station, Dist. Nanded for the offences punishable under Sections 302, 394, 397, 411 and 201 read with Section 34 of the Indian Penal Code, on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with one surety in the like amount.

(III) The applicants shall not tamper with the prosecution evidence.

(R.G. AVACHAT, J.)

SSD