

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1010 OF 2022

SUNNY DHARMRAJ PAWAR
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Abhaysinh K. Bhosle
APP for Respondent : Mr. K. S. Patil
...

CORAM : S. G. MEHARE, J.

DATE : 13-10-2022

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent/State.
2. The applicant has been arraigned as an accused for the offence of murder. The applicant was arrested in the crime on 29.11.2022 i.e. on the second day of the incident. The first informant was the witness to the incident. The incident happened on the road. The deceased and the first informant carrying Rs.10 Lakh. It has been alleged that four persons assaulted the deceased and tried to snatch the bag of Rs.10 Lakh. However, by supplementary statement, it has been improved that ten persons assaulted the deceased and he will identify each one.

3. The applicant has a case that he has been falsely implicated in the crime. He was working as a labour with the parking contractor. The similarly situated co-accused has been released on bail. The police have seized the knife and the cloths wore by him with blood stains under the recovery memo under Section 27 of the Indian Evidence Act. The identification parade was also held. The first informant, who allegedly the best witness, did not identify the applicant. The learned counsel for the applicant would submit that the evidence of eye witness will prevail over the circumstantial evidence like corroborative evidence collected under Section 27 of the Evidence Act. He has also argued that nothing is to be recovered from the applicant. The police have created the false evidence against the applicant. Previously, the applicant was charged for the mild offences. Referring to the statements of the witnesses, he would submit that the other two eye witnesses namely Shrikrushna Bhagwan Patil and Dattu Anil Mali were the witnesses to the incident. They reached on the spot after the alleged incident; therefore, they cannot be considered as the eye witnesses. The learned counsel for the applicant would submit that the applicant is behind the bar for a long period. The investigation has been completed and the chargesheet has also been filed. The applicant is not the resident of the place of the deceased and the eye witnesses. Therefore, the applicant may be released on bail.

4. The learned A.P.P. for the respondent/State has strongly opposed the application. He submits that the strong evidence is available against the applicant. The nephew of the co-accused Natwar Jadhav was the witness to the conspiracy. He stated that the main accused Natwar was with the applicant. The C.A. report also corroborates the recovery of blood stained knife and cloths. The prosecution has the strong circumstantial evidence against the applicant indicating that he was involved in the crime. The offence is serious. The applicant may tamper with the prosecution witnesses. The trial is likely to be opened in near future. Hence, the application may be rejected.

5. The facts discussed above reveal that the nephew of the co-accused Natwar Jadhav had stated that the applicant went to meet Natwar Jadhav. There appear no direct evidence that he was the part of conspiracy plotted by the co-accused Natwar. Be that as it may, the recovery of the blood stained knife and cloths at the instance of applicant, under Section 27 of the Indian Evidence Act, is a corroborative piece of evidence. The identification parade may be the good evidence. The first informant has categorically stated in his supplementary statement that he saw all the culprits in the light of the motor vehicle and able to identify each one. However, he did not identify the applicant in the test identification parade. Comparing the circumstantial evidence with the direct evidence,

the law is well settled that the direct evidence would prevail over the circumstantial evidence. The applicant has a good case for bail on the basis of non-identification of the applicant by the first informant / eye witness to the incident. Undoubtedly, the offence is serious, but his further detention seems not essential. The apprehension of the prosecution may be guarded by imposing certain conditions. In view of the matter, the application deserves to be allowed. Hence, the following order :-

- i) The application is allowed.
- ii) Applicant Sunny Dharmraj Pawar be released on bail, on furnishing PB and SB of Rs.25,000/- with one solvent surety of the like amount, in C.R.No. 411 of 2022 registered with Dharangaon Police Station, Jalgaon, for the offence punishable under Sections 302, 393, 396 and 120B of the Indian Penal Code, on the conditions that (a) He shall not tamper with the prosecution witnesses, and (b) He shall attend the trial on each material date of hearing and co-operate for conclusion of the trial.
- iii) Bail before the learned trial Court.

**(S. G. MEHARE)
JUDGE**