

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

BAIL APPLICATION NO.1027 OF 2022

Bajirao s/o. Vinayak Mane

..Applicant

Vs.

The State of Maharashtra

..Respondent

Mr.S.R.Bagal, Advocate for applicant
Mr.S.P.Sonpavale, APP for respondent

**CORAM : R.G. AVACHAT, J.
DATE : AUGUST 18, 2022**

ORDER :-

This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.051 of 2022 registered with Ashti Police Station, Dist. Jalna.

2. Heard learned counsel appearing for the parties.

3. The First Information Report (FIR) has been lodged by the brother of the deceased on 16.03.2022. It is alleged therein that some unknown persons for unknown reason, committed murder of his brother – Rohidas by assaulting on his head with some weapon. During investigation, it was found that the deceased had extra marital relation with the wife of the applicant. The applicant had, many a time, asked him to stay away from his wife. Since the deceased did not listen, the

applicant murdered him. On investigation, charge sheet has been filed.

4. Learned counsel for the applicant would submit that it is a case based on circumstantial evidence. The deceased had made a phone call to his wife little past 3:00 p.m. The only evidence is that the deceased was seen last in the company of the applicant. Same is insufficient to warrant the applicant's pre-trial detention. He, therefore, urged for grant of bail.

5. Learned APP would, on the other hand, submit that there was a strong motive for the applicant to eliminate the deceased. There is a statement of one Govardhan Rathod to indicate that both deceased and applicant had been to him. They took meals under a tree. The applicant picked up quarrel with the deceased. This witness asked both of them not to quarrel. He further asked them to leave the place. Both of them, therefore, went away on their respective motor bikes towards canal side. There is also a disclosure statement by the applicant, pursuant to which one iron rod with pointed head, came to be recovered. His blood stained clothes have also been seized. Learned APP would, therefore, submit that there is a strong material to indicate the applicant's involvement in the crime in question. He, therefore, urged for rejection of the application.

6. Considered the submissions advanced. Perused the FIR and the related papers.

7. The FIR has been lodged against unknown person. The case is based on circumstantial evidence. The wife of the deceased has stated in her statement that she had asked the deceased to stay away from the wife of the applicant. Illicit relation between the deceased and the wife of the applicant is said to be the motive for the crime. Close scrutiny of the police papers would indicate that there is no C.A. report pertaining to seized blood stained clothes of the applicant and the weapon allegedly used in commission of the offence. Said material, therefore, cannot be said to be incriminating. Then, there is only the statement of said Goverdhan Rathod, who stated that the deceased and the applicant had been to him by little past 2:00 p.m. Both of them took meals there. Since both of them started quarreling inter-se, he asked them to leave the place. Both of them then left on their respective motor bikes towards canal side. As per the statement of this witness, the deceased and the applicant had meals at that place. Whereas, according to the wife of the deceased, the deceased had called her on phone by little past 03.00 p.m. and informed to have taken meal at one *Saptah* (religious

function) and therefore, he would not take meal at the residence on his return. Even if we accept the statement of said Govardhan Rathod to be true, the same indicates that both the applicant and the deceased were together for some time and then went away on their respective motor bikes. Based on this material only, involvement of the applicant in the alleged crime is said to be made out. Learned counsel for the applicant would submit that mere last seen theory is insufficient to base a conviction. Learned counsel may be right.

8. Since the case is based on circumstantial evidence and the only circumstance sought to be relied upon is in the nature of last seen theory and a motive, this Court finds it to be a case for grant of bail.

9. Hence, the following order:-

(i) The application is allowed.

(ii) The applicant be released in connection with Crime No.051 of 2022 registered with Ashti Police Station, Dist. Jalna., on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(iii) The applicant shall not tamper with the prosecution evidence in any manner.

[R.G. AVACHAT, J.]

KBP