

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1402 OF 2022

Ajay Vaijinath Bhange,
Age 20 years, Occu. Labourer,
R/o. Deshmukh Chari, Nimgaon,
Taluka Kopargaon, District Ahmednagar .. Applicant

Versus

The State of Maharashtra
Through Shirdi Police Station,
Taluka Rahta, District Ahmednagar .. Respondent

Mr. Rajendra L. Kute, Advocate for Applicant;
Mr. V. M. Kagne, APP for Respondent/State

WITH
CRIMINAL APPLICATION NO. 3482 OF 2022
IN BAIL APPLICATION NO.1402 OF 2022

Rohit s/o. Ravindra Mali,
Age 17 years, Occu. Education,
R/o. Nimgaon Karhale, Taluka Rahata,
District Ahmednagar
(under guardian of his mother
Smt. Bhagyashree w/o. Ravindra Mali
Age 39 years, Occu. Household,
R/o. Nimgaon Karhale, Taluka Rahata,
District Ahmednagar .. Applicant

Versus

1. Ajay Vaijinath Bhange,
Age 20 years, Occu. Labourer,
R/o. Deshmukh Chari, Nimgaon,
Taluka Kopargaon, District Ahmednagar
2. The State of Maharashtra
Through Shirdi Police Station,
Taluka Rahta, District Ahmednagar .. Respondents

Ms.Renuka B. Palve (Ghule), Advocate for Applicant;
Mr. Rajendra L. Kute, Advocate for Respondent No.1/complainant;
Mr. V. M. Kagne, APP for Respondent No.2/State

CORAM : S. G. MEHARE, J.

DATE : 14-10-2022

PER COURT :-

1. Heard the learned counsel for the applicant, the learned A.P.P. for the respondent/State and the learned counsel for the complainant.
2. The applicant has been charged with murder, criminal conspiracy, unlawful assembly and threats. The incident happened on 19.11.2020 at about 10.30 p.m. As per the first information report, the incident occurred in the grocery shop of the deceased. It has been alleged that before the incident, the applicant and other co-accused threatened the wife of the deceased as she was demanding credit money for her grocery articles. The complainant/son of the deceased is the eye witness who has narrated the incident. He alleged that the applicant and other persons came to the shop. The applicant assaulted his father with a knife on the neck, and out of the assault, he died.
3. The learned counsel for the applicant has vehemently argued that the history of assault was narrated to the Doctor at Shri.

Saibaba Hospital, Shirdi, the unknown persons assaulted the deceased near the wine shop on helipad road in the village Nimgaon Deshmukh Chari. He also read the statement of the witness Nana Sahebrao Mali and argued that he took the deceased to the hospital, but he might have directed the history. He would refer to the information of the medico-legal case (MLC), dated 19.11.2020 and vehemently argued that as per this MLC, Sanjay Sahebrao Mali took the deceased to the hospital and narrated the history of assault. He narrated that unknown persons assaulted the deceased, as above. The history narrated above destroyed the prosecution case. The knife allegedly seized at the instance of the applicant, under Section 27 of the Evidence Act, was not blood-stained. Admittedly, there are criminal cases against the applicant for the offences punishable under Sections 399, 329, 307, 394 and 324 of the Indian Penal Code, but he has been on bail in all those offences. The applicant has been languishing in jail since 20.11.2020. The investigation is completed. The charge sheet has been filed, but the trial has not begun.

4. In view of the above arguments, the learned counsel for the applicant has vehemently argued that the applicant's case as regards the assault is inconsistent. Since he has antecedents, he

has been falsely implicated in the crime. The applicant has no concern with the present crime. Hence, the applicant may be released on bail.

5. The learned A.P.P. for the State and the learned counsel for the complainant have vehemently argued that the direct evidence of the eyewitness will prevail over the medical evidence. The complainant knew the applicant well. The applicant and his family were always creating mess in the locality and threatening the deceased and his family when they were demanding the balance money of the grocery. The learned A.P.P. would argue that the history of assault on page no.38 is the outcome of the history of assault on page no.52. The history mentioned on page No. 52 does not disclose the name of the disclosure. Hence, unless the witness is examined, it would not be considered at this juncture. Therefore, the importance may not be given at this juncture, as who has narrated the history of assault. It is a matter of evidence and subject to explanation. The applicant has bad antecedents. He was involved in the offences of robbery, attempt to commit murder, and other serious body offences punishable under the Indian Penal Code. Bare granting bail in those cases would not give him a clean chit. Antecedent to the discredit of the accused is a ground to decline the bail. Repeated crime by the same person harms society, and preventing such a person is necessary to maintain law

and order.

6. The learned counsel appearing for the complainant has vehemently argued that the applicant has a big group in the village. They were regularly creating terror; hence, the applicant may not be granted bail. If the bail is allowed, he may tamper with the

prosecution witnesses, and the possibility of threatening them cannot be ruled out. As discussed above, it is not in dispute that the incident happened in the presence of the witnesses, in the grocery shop. The first information report reveals explicitly that prior to the incident, the applicant threatened the family of the deceased when they were demanding the balance amount for grocery articles the accused and his family had purchased. The contradiction as regards the history narrated to the Doctor and in the first information report is a matter of appreciation of evidence during the trial.

7. The learned APP pointed out that on page no. 52, the Medical Officer did not take care to write the name of the person who narrated the history of the assault. He has also correctly argued that direct evidence prevails over medical evidence. While considering the bail application, the Court did not appreciate the evidence as if it were a trial. The Court has to consider the *prima facie* case for bail. The record also reveals that the deceased died due to assault with a knife on his neck. Whether the knife was blood-stained or not, why it was not blood-stained is also a matter

of appreciation of evidence on merit. The recovery of the incriminating article is usually used for corroboration. After going through the papers submitted by the Investigating Officer in the charge sheet and the direct evidence of the eyewitnesses against the applicant as well as the gravity of the offence along with a bad past of the applicant, it would be inappropriate to release the applicant on bail. Hence, the application stands dismissed.

8. Criminal Application No. 3482 of 2022 is allowed.

(S. G. MEHARE)
JUDGE

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