

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

BAIL APPLICATION NO. 1495 OF 2022

Shaikh Naser Shaikh Abdul Wahed Patel

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

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Mr. N.S. Ghanekar, Advocate for applicant

Mr. A.V. Deshmukh, A.P.P. for respondent – State

Mr. G.A. Kulkarni, Advocate for assist to A.P.P.

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CORAM : R.G. AVACHAT, J.

DATE : 27th SEPTEMBER, 2022

PER COURT :

1. This is an application for bail under Section 439 of Code of Criminal Procedure. The applicant has been arrested in connection with Crime No. 28 of 2022 registered with CIDCO Police Station, Dist. Aurangabad for the offences punishable under Sections 302, 143, 147, 148, 149, 201 and 120-B 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 16th January, 2022. It has been averred in the F.I.R. that deceased – Hasan had

been to Misarwadi by 09:00 p.m. on 15th January, 2022 for celebrating birthday of his friend. The informant and his family members called on cell phone of deceased – Hasan many a time. The cell phone was switched off. The informant, therefore, went to Misarwadi area in search for his brother – Hasan by 11:00 p.m. He noticed his brother – Hasan smoking cigarette at a pan stall near fencing of Greaves Cotton Company. The informant asked him to accompany him home. Nine persons named in the F.I.R. alongwith 2-3 unknown persons, including the applicant herein, all of a sudden came there. They were armed with sharp weapons like knives. All of them mounted attack on the deceased – Hasan and then fled. Hasan was rushed to the hospital, but declared dead before admission. The cause of death is “shock and hemorrhage due to multiple stab wounds to vital organs”. The postmortem report indicates the deceased to have suffered 38 stabs. On investigation, the charge-sheet has been filed. The applicant is one of the accused.

4. Learned counsel for the applicant would submit that the applicant is a practicing advocate. On the fateful night, he returned home by 10:00 p.m. alongwith his wife and children. He was at home overnight. There is C.C.T.V. footage of his residence to indicate the applicant to have been watching television programs from 10:00 p.m. to 12:00 midnight. Name of the applicant has been given by the so called eye witnesses out of

animosity. The applicant and his wife had made frantic efforts to approach the Commissioner of Police and other police officials to request them to receive C.C.T.V. footage of his residence. The investigating officer was not fair enough. The statements given by the so called eye witnesses are stereotype. According to learned counsel, on investigation, the charge-sheet has been filed. It will necessarily take time for commencement and conclusion of trial. The applicant has a strong material in proof of his defence version. He, therefore, urged for grant of application.

5. Learned A.P.P would, on the other hand, submit that name of the applicant figures in the F.I.R. There are four more eye witnesses. All of them claim to have had seen the applicant assaulting the deceased. The C.C.T.V. footage has no authenticity at this stage. The applicant may produce the same in his defence evidence. The investigating officer had been to house of the applicant no sooner the crime was registered. The C.C.T.V. footage was not offered to him that time. According to learned A.P.P, the applicant has criminal antecedents. The order passed by this Court rejecting applicant's anticipatory bail has been strongly relied on to submit that the Court cannot direct the investigating officer to collect C.C.T.V. footage, as has been suggested by the applicant. The same might turn out to be fabricated piece of evidence. Learned A.P.P, therefore, urged for rejection of the application.

6. Considered the submissions advanced. True, brother of the deceased has been brutally murdered. The informant claimed to have had witnessed the incident. He has named the applicant as one of the assailants. There are statements of four other witnesses, who too claimed to have had seen the applicant assaulting the deceased with a sharp weapon. The applicant has criminal antecedents as well. Learned A.P.P. may, therefore, have reason to contend that the seriousness of offence and the quality of material available against the applicant, disentitles him for grant of bail.

7. There is however, other side of the story. In anticipatory bail application preferred by the applicant, the investigating officer had himself relied on Rule 137 of the Maharashtra Police Manual. The said rule reads thus :-

“137. Investigation to be impartial and local.- (1) Police enquiries should always be impartial. It is the duty of the Police to do all they can to find out the truth. An investigating officer is to aim at discovering the actual facts and arresting the real offender. He ought not prematurely to commit himself to any view of the facts for or against any person. He should consider carefully any evidence tendered to him on behalf of an accused person. He should not make up his mind to be influenced by evidence only.”

8. The wife of the applicant has filed her affidavit on record to submit that the applicant had been at his residence from 10:00 p.m. overnight (intervening night of 15th and 16th January, 2022). According to

her, at the time of incident, the applicant was home. He has been falsely implicated. The C.C.T.V. footage was relied on. This Court has watched the same in open Court. The applicant was seen returning home alongwith his wife and children in his car by 09:30 p.m. on 15th January, 2022. The further C.C.T.V. footage of duration not less than two hours indicate the applicant had been watching television programs at his home. There is material to indicate the applicant and his wife have made number of messages and communications with the high ranking officials including Commissioner of Police, requesting them to hear his side of the story. The request was also made to collect the C.C.T.V. footage of his residence. An expert has also filed a certificate under Section 65(b) of the Evidence Act alongwith an affidavit stating therein that the C.C.T.V. cameras were in order and there is nothing to suspect the same to be tampered with. In view of this Court, it would just be illogical to concede to the submission made by learned A.P.P. that such kind of material could only be considered by the Court when the same would be produced in defence evidence. On investigation, the charge-sheet has been filed. There is prima facie material to indicate the applicant has a good defence to make. To top it, the informant through his counsel appeared before this Court and gave no objection to grant the applicant bail. It will necessarily take time for commencement of trial and conclusion thereof. In the facts and circumstances of the case, this Court is inclined to grant the applicant bail.

9. 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 applicant be released on bail, in connection with Crime No. 28 of 2022 registered with CIDCO Police Station, Dist. Aurangabad for the offences punishable under Sections 302, 143, 147, 148, 149, 201 and 120-B of the Indian Penal Code, on executing PR. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(III) The applicant shall not leave State of Maharashtra without prior permission of the Court.

(IV) The applicant shall not tamper with the prosecution evidence.

(R.G. AVACHAT, J.)

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