

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

14 BAIL APPLICATION NO.1568 OF 2022

SUMITH @ SUMYA GOPINATH HATKAR
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Bagal Suraj R.
APP for Respondent-State : Mr. K. S. Patil.
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CORAM : S. G. MEHARE, J.
DATE : 14.11.2022

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the respondent-State.
2. The applicant was arrested on 18.02.2021. The alleged incident happened on 12.02.2021. The FIR was registered on 15.02.2021. It has been alleged that on 12.02.2021, the brother of the main accused Rohini, namely Prashant, had made a phone call to deceased Aakash and called him out. Since the first informant/mother had a doubt, she sent Siddhant with the deceased. When the deceased and Siddhant reached the nameplate of Ambedkar, the main accused, Rohini, her brother Prashant, her relative Satish Hatkar and one unknown person were present there. They were holding a knife and swords. The main accused Rohini was holding the bottle

containing petrol. She instigated co-accused Prashant and Satish to kill the deceased. Prashant stabbed the deceased with a knife. Satish assaulted the deceased with a sword on his head. Co-accused Prashant and one unknown person held the deceased, then accused Rohini poured the petrol on the person of the deceased from the bottle and set him at the fire. But the deceased fled away. On the basis of the report lodged by the mother of the deceased, the FIR was registered.

3. Learned counsel for the applicant would submit that the applicant was not named in FIR. However, he was arrested on 18.02.2021. After his arrest, the first informant and another witness Siddhant, gave the statements on 19.02.2021 and 03.03.2021, respectively. He would point out that for the first time, the first informant attributed the role of the applicant assaulting the deceased with a knife. The prosecution has no material to show how she learnt the name of the applicant. Another witness Siddhant changed the role attributed to the applicant by deposing that the person wearing half pant assaulted the deceased with a knife on his stomach. He did not state the name of the applicant. He also argued that no Test Identification Parade was held. The description of the applicant is also not given in the FIR. The witnesses had an opportunity

to look at the said third person for sufficient time. The incident happened on the street in the residential locality. The spot panchanama reveals that the incident happened in front of the house of one Waghmare. The prosecution has deliberately not disclosed whether there were street poles. The applicant has been arraigned as an accused afterthought. The applicant has played no role. He has been falsely implicated in the crime. A false recovery of a knife has also been shown at his instance. Considering the evidence collected against him raises serious doubt about his involvement in the crime. Hence, he may be released on bail.

4. Learned APP has strongly opposed the application. He would submit that the crime was committed with premeditation. The deceased was called on the road where the main accused was present. The deceased was brutally murdered. He would submit that the weapon has been recovered at the instance of the applicant. The name of the applicant has been transpired during the investigation. Hence, he may not be granted bail.

5. It appears from the supplementary statement of witness Siddhant that he described the unknown person as a person wearing half pant. However, there is nothing in the first

information report about the unknown person. No other description of the said person is also given. The supplementary statement of the first informant and this witness Siddhant, recorded subsequent to his arrest demonstrated the discrepancy as regards the role attributed to the applicant. No doubt, the offence is apparently serious. However, the prosecution did not produce a record of whether the public was on the spot or not. Considering the spot of the incident, the possibility of having the street poles on the road cannot be ruled out. There are no antecedents to the discredit of the applicant. The applicant is a young boy of 20 years. He may be surrounded by the hardened criminal in jail if allowed to be behind the bar.

6. For the reasons discussed above, it is desirable to release the accused on bail. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant **SUMITH @ SUMYA GOPINATH HATKAR** be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount, in Crime

No.85 of 2021, registered by Police Station Shivajinagar, District Nanded, for the offences punishable under Sections 302, 307, 506, 201 read with Section 34 of the IPC and Section 4/25 of the Arms Act on condition not to tamper with the prosecution witnesses and to attend the trial on each and every material date.

(S. G. MEHARE, J.)

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vmk/-