

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1610 OF 2021

Sunil S/o Premdas Vanarase

Applicant

Versus

The State of Maharashtra

Respondent

Mr. A. S. Gandhi, Advocate for the applicant.

Mr. V. S. Badakh, APP for respondent/State.

CORAM : M.G. Sewlikar, J.

DATE : 25th FEBRUARY, 2022.

PER COURT :

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No. 0248/2019 registered with Badnapur, Tq. Badnapur, Dist. Jalna for the offences punishable under Sections 302, 308, 120-B of the Indian Penal Code, under Sections 3 and 25 of Arms Act and under Sections 3(1), (i), 3(2), 3(4) of Maharashtra Control of Organized Crime Act, 1999.

2. Informant is the brother of Sanjay Kisanrao Ambhore (since deceased).

3. Allegations against the applicant in nutshell are that upon the First Information Report of Sanjay Kisanrao Ambhore, offence under Sections 307, 147, 148 and 149 of the Indian Penal Code vide Crime No. 135/2017 registered with Chandanzira Police Station, Jalna. This First Information Report was lodged against accused Summersingh Kakarwal, Uttam Dhunawat, Madan Kholwal, Rajsingh Kalani and applicant Sunil Vanarase alleging that they had threatened the deceased Sanjay Kisanrao Ambhore. The accused did not want Sanjay Ambhore to work as Labour Contractor.

4. About one and half month before the incident, one Vijay Sundarde, who was working with the deceased Sanjay as a labourer, was thrashed by accused Madan Kholwal, Summersingh Kakarwal, Uttam Dhunawat and others as Vijay Sundarde was working with the deceased.

5. On 7th October, 2019, at 7.40 pm, he heard some sound. When he turned back, he found Sanjay Ambhore in a pool of blood. Sanjay had injury on his back and head. One Anand Ambhore informed the informant that two unknown persons had come there on motorcycle and one of them fired a bullet at deceased Sanjay

Ambhore. The deceased was taken to Dipak Hospital, Jalna, where he was declared as brought dead. On these allegations, First Information Report came to be lodged against the applicant under the aforesaid sections.

6. Shri Gandhi, learned counsel for the applicant, submits that there is no evidence against the applicant except statement of Pratik Hiwrale in which he has stated that applicant had gone to a lane and came back with a revolver. He submits that the said revolver is not recovered. There is nothing on record to indicate that infact the applicant had collected the revolver from any person from that lane. Prosecution has also not examined the person who had given the alleged revolver in that lane. He submits that except this evidence, there is nothing to connect the applicant with the offence. Learned counsel for the applicant submits that if the applicant is released on bail, he would not enter Jalna city till the conclusion of the trial.

7. Learned APP submits that the incident took place at 7.40 pm. Statement of Feroz Yusuf Patel shows at 9.00 pm applicant had met Rajsingh Kalani and Chandrakant @ Dadu Athawale who are the

persons who fired on Sanjay and killed him. He submits that this statement is sufficient to implicate the applicant in this offence.

8. I have given thoughtful consideration to the submissions of both the learned counsel.

9. Statement of Pratik Hiwrale under Section 164 of the Code of Criminal Procedure shows that about 15 days before 14th October, 2019, he was driving a Bolero Jeep. On that day at 9.00 to 9.30 pm, he picked up accused Rajsingh Kalani and Chandrakant @ Dadu Athawale. Accused Sumersingh was also in the jeep. Sumersingh asked Pratik Hiwrale to take the Jeep to Matoshri hotel at Indewadi as he wanted to pick up Sunil Vanarase i.e. the applicant. It has further come in his statement that applicant gave one number to Dadu Athawale and Dadu Athawale made call on that number and went into a lane and came back. After returning, Sumersingh asked Dadu Athawale from where he had collected the revolver. From this statement, it does not appear that applicant had gone to collect the revolver. From this statement, it does not even appear that Dadu Athawale had collected the revolver. Admittedly, the revolver is not recovered.

10. Statement of witness Feroz Yusuf Patel shows that at 9.00 pm applicant Sunil Vanarase got down from the jeep and went to the motorcycle on which two persons by the name of accused Rajsingh Kalani and Dadu Athawale were riding. They had a dialogue for 10 to 15 minutes. Thereafter applicant paid some amount to those two persons and then went away. This is the only evidence against the applicant. What dialogue took place between the applicant and accused Rajsingh Kalani and Dadu Athawale is not stated. Prosecution has not examined the person who had allegedly given revolver to Dadu Athawale. The revolver is yet not recovered. On the basis of this scanty evidence, it cannot be said that there is any prima facie case against the applicant. Learned APP submits that criminal cases are pending against the applicant. Past criminal record will have relevance only when prima facie case is made out in the case in which the applicant is seeking bail. In the case at hand, on the basis of the evidence collected by the prosecution, it cannot be said that there is prima facie case against the applicant. In this view of the matter, I am inclined to release the applicant on bail. In this view of the matter, following order is passed :-

ORDER

- i) Application is allowed.

ii) Applicant be released on PR Bond of Rs. 50,000/- (Rs. Fifty Thousand) with one solvent surety in the like amount in connection with Crime No. 0248/2019 registered with Badnapur, Tq. Badnapur, Dist. Jalna for the offences punishable under Sections 302, 308, 120-B of the Indian Penal Code, under Sections 3 and 25 of Arms Act and under Sections 3(1), (i), 3(2), 3(4) of Maharashtra Control of Organized Crime Act, 1999, on condition that he shall not pressurise the witnesses and shall not enter Jalna city till the conclusion of the trial except for attending the dates fixed during the trial.

iii) Application stands disposed of.

iv) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

(M. G. SEWLIKAR)
Judge