

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1830 OF 2022

Tanaji Trimbak Kadam,
Age 42 years, Occu. Agril.,
R/o. Karwanji, Tq. Lohara,
Dist. Osmanabad

.. Applicant

Versus

The State of Maharashtra

.. Respondent

Mr. M. A. Tandale, Advocate for Applicant;
Mr. K. S. Patil, APP for Respondent/State

CORAM : S. G. MEHARE, J.

DATE : 29-11-2022

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent/State at length.
2. The applicant has moved the present application for bail under Section 439 of the Code of Criminal Procedure, in Crime No.64 of 2022, registered with Lohara Police Station, District Osmanabad, for the offence punishable under Sections 302, 307, 109, 114 read with Section 34 of the Indian Penal Code.
3. The applicant has been arraigned as an accused of murder and causing injuries to the first informant. The prosecution has two eyewitnesses. One of the witnesses immediately informed the incident of murder to the injured. Immediately the injured was

taken to the police station. The police sent him to the Rural Hospital, Lohara, for a medical examination. Then a detailed report was reduced to writing, and the crime was registered.

4. The learned counsel for the applicant has vehemently argued that the injuries caused to the injured are insufficient to constitute an offence punishable under Section 307 of the Indian Penal Code. The police, while sending the injured to the hospital, did not disclose the entire incident in the requisition. The Court has to pass an order in bail application without expressing the merits and demerits of the case. Rejection of bail is a punishment before the trial. Bail is a rule, and jail is an exception. The applicant is innocent, and no offence is made out against him. The applicant is the sole breadwinner of his family. The applicant has to look after his field. If he would not be released on bail, his family will be put to starvation. He is ready to abide by the conditions imposed, including staying outside his residence if he is granted bail. He relied upon the case of ***State of U.P. through CBI Versus Amarmani Tripathi, (2005) 8 Supreme Court Cases 21***. In the said case, the guidelines about the factors to be considered while granting or refusing bail have been expressed. He also relied on the case of ***Peddireddy Subbareddi and others Versus State of A.P., 1991 Cri. L.J. 1391***, on the point of delay in lodging the report.

5. As far as the case of **Niranjan Singh and another Versus Prabhakar Rajaram Kharote and others, 1980 Cri.L.J. 426** is concerned, the Honourable Supreme Court has observed that *"Grant of bail is within the jurisdiction of the Sessions Judge, but the Court must not, in grave cases, gullibly dismiss the possibility of police-accused intimidating the witnesses with cavalier case. In our country, intimidation by policemen, when they are themselves accused of offences, is not an unknown phenomenon and the judicial process will carry credibility with the community only if it views impartially and with commonsense the pros and cons, undeterred by the psychic pressure of police presence as indicates."*

6. In the case of **State of U.P. through C.B.I. Versus Amarmani Tripathi, (2005) 8 Supreme Court Cases 21**, the application before the Honourable Supreme Court was for cancellation of bail. The law has been laid down in the said case that *the general rule that the Supreme Court will not ordinarily interfere in matters relating to bail is subject to exceptions where there are special circumstances and when the basic requirements for the grant of bail are completely ignored by the High Court.* The Honourable Supreme Court has also observed that *granting of bail merely on the ground that extra-judicial confession made by co-accused implicating them in crime was inadmissible in evidence is improper.* Referring to the case of **Kalyan Chandra Sarkar**

Versus Rajesh Ranjan, (2004) 7 SCC 528, the factors to be considered for granting bail have been reiterated from paragraph 11 of the said Judgment, which read thus;

- (a) *The nature of the accusation, the severity of punishment in case of conviction, and the nature of supporting evidence.*
- (b) *Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*
- (c) *Prima facie satisfaction of the Court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598.*

7. The facts of the case of ***Peddireddy Subbareddi and others Versus State of A.P.*** (*supra*) were that the report was delayed by 15 hours. The Court raised a doubt that the evidence of P.W.No.1 was clouded with strong suspicion and held that the false implication of the accused can not completely be ruled out. In the circumstances, the Court granted bail.

8. The learned A.P.P. has strongly opposed the application. He would submit that the F.I.R. was lodged on the very same day of the incident. The police were correct in sending the applicant first to the hospital to save his life. The F.I.R. is not an encyclopedia of facts. The F.I.R. was registered at 9.45 p.m. on the day of the incident. The circumstances support the case of a slight delay of two to three hours. Hence, it cannot be said that there was an inordinate delay in lodging the F.I.R. There were three

eyewitnesses to the incident. The post-mortem report supports the contentions of the witnesses. The sickle allegedly used by the accused has been recovered at his instance. The offence is grave. After knocking the lady down, the applicant assaulted the injured. The injuries are not the criterion to determine the intention to kill, but the way of assault is the material factor to be considered. The complainant has no intention to implicate the applicant falsely in the crime. The learned counsel for the applicant has rightly argued that while dealing with the application, the Court has to consider the *prima facie* material and should not evaluate the evidence on merit and demerits of the case. He prayed to reject the application.

9. The injured alleged that the accused assaulted him at around 6.00 p.m. with a sickle. However, he avoided the assault, which caused injuries to his armpit, left hand and stomach. He rushed at the injured with the stone. Hence, he fled away. Meantime, the eyewitnesses came there, and one of the eyewitnesses told him that the applicant had killed one lady named Prabhawati. Then, he was taken to the hospital. The police sent the injured for medical treatment with a letter specifically mentioning that he had injuries on his hand and stomach due to assault. The hospital received the request letter at 8.45 p.m. Immediately at 9.45 p.m. Doctor gave endorsement that the injured was conscious oriented to give the statement. His

statement was recorded. Considering these facts, it would be difficult to accept that there was an inordinate delay in lodging the report.

10. The medical evidence supports the injuries the injured had suffered. The injury on the back of the deceased was a linear incision on the left side above the iliac crest with local bruising on the back of the neck. The post-mortem report supports the injuries narrated by the eyewitnesses. When the first informant gave a statement, there was no reason to raise doubt about the deceased's husband for his keeping silent.

11. The offence is undoubtedly severe, and at this juncture, the conviction cannot be ruled out as it is supported by the relevant evidence. After having gone through the relevant material placed on record by the prosecution, the Court is *prima facie* satisfied that the charges levelled against the applicant are supported with the required evidence.

12. For the above reasons, the application stands dismissed.

(S. G. MEHARE)
JUDGE

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