

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

BAIL APPLICATION NO. 1530 OF 2019

Bhaurao @ Dadasaheb Raybhan Dhamale @

Dadasaheb Raybhan Dhamale

Age : 32 years, Occu. : Driver.,

R/o. : Kangoni, Talunka Newasa

Dist. Ahmednagar.

.... Applicant

Versus

The State of Maharashtra

... Respondents

....

Mr. Nilesh S. Ghanekar, Advocate for the Applicant

Mr. S.G. Sangle, APP for Respondent / State

Ms. Rashmi S Kulkarni, Advocate for the informant

....

CORAM : SHRIKANT D. KULKARNI, J.

Reserved on : 02.03.2022

Pronounced on : 04.03.2022

FINAL ORDER :

1. The applicant is seeking bail by taking aid of Section 439 of the Criminal Procedure Code in connection with Crime No. I-48 of 2017 registered at Shani Shingnapur Police Station, District Ahmednagar for the offences punishable under Sections 302, 143, 147, 148, 149, 120(B), 201, 506 of the Indian Penal Code and under Sections 3(25), 4(25) of the Indian Arms Act and under Sections 37(1)(3)/135 of the Bombay Police Act.

2. According to the prosecution case, Ganesh Bhutkar (since deceased) was resident of Shani Shingnapur, Taluka Newasa. He was running the shop of *pooja sahitya* at Shani Shinganapur. Late Ganesh Bhutkar and Avinash Changdeo Bankar / accused no.1 and Ganesh Sonawane / accused no.7 had purchased agricultural land at the outskirts of village Shani Shingnapur. On account of that, the dispute was going on between the deceased Ganesh Bhutkar and accused no.1 Avinash Bankar. On 20.12.2017, in the morning, accused no.7 Ganesh Sonawane called the deceased on his phone and called in the evening about 5.30 p.m. for talks to settle the dispute. Accordingly, the deceased reached in the Shaniraj parking place about 5.30 p.m.

3. Accused nos. 1 to 7 (including the applicant) alleged to have arrived on the spot by one Scorpio vehicle, which was without number plate. They stepped down and alleged to have made attack on Ganesh Bhutkar. Avinash Changdeo Bankar / accused no.1 alleged to have given blow by means of an axe on the head of Ganesh Bhutkar. Lakhan Dhage / accused no.4 alleged to have pierced sword in the chest of Ganesh Bhutkar. Mayur Harkal / accused no.5 and Ganesh Sonawane / accused no.7 also alleged to have assaulted Ganesh Bhutkar by means of swords. Arjun

Mahale / accused no.3 and Pankaj Bankar / accused no.2 alleged to have armed with pistol and they blocked the road so that Ganesh Bhutkar may not run away. The applicant Bbhaurao Dhamale / accused no. 6 alleged to have assaulted Ganesh Bhutkar by means of wooden rafter. The first informant / brother of the deceased Rameshwar Macchindra Bhutkar, after receiving the information about the attack on his brother Ganesh Bhutkar reached the spot. He tried to intervene in the quarrel. Accused no.1 alleged to have threatened to the first informant with dire consequences. After making such assault, the accused, including applicant fled away from the spot by the said Scorpio vehicle. Ganesh Bhutkar subsequently taken to the *Shaneshwar Gramin Rugnalaya* at Shani Shingnapur, and thereafter, shifted to Ahmednagar where he succumbed to injuries.

4. On the basis of F.I.R. lodged by Rameshwar Bhutkar (brother of the deceased), crime no. I-48 of 2017 came to be registered at Shani Shingnapur Police Station, District Ahmednagar for the offences punishable under Sections 302, 143, 147, 148, 149, 120(B), 201, 506 of the Indian Penal Code and under Section 3(25), 4(25) of the Indian Arms Act and under Sections 37(1)(3)/ 135 of the Bombay Police Act.

5. The applicant came to be arrested on 10.01.2018. He was initially remanded to P.C.R. and since 20.01.2018, he is in magisterial custody.

6. The investigation is completed and charge-sheet is filed. The Sessions trial is commenced and the deposition of first informant is in progress.

7. The applicant had filed bail application before the Sessions Court, which came to be rejected vide order dated 04.10.2018. The applicant filed bail application no. 1566 of 2018 before this Court, which came to be withdrawn with liberty to file application afresh in due course vide order dated 15.01.2019. After receiving the CCTV footage, the applicant filed another bail application before the Sessions Court. The same was also turned down. In the above background, the applicant has moved the present application for bail.

8. Heard Mr. Nilesh Ghanekar, learned counsel for the applicant, Mr. S.G. Sangle, learned APP for respondent / State assisted by Ms. Rashmi Kulkarni, learned counsel for the first informant. Perused the copy of F.I.R., copy of the charge-sheet with statements of witnesses and other papers, copy of orders passed by this Court.

9. Mr. Ghanekar, learned counsel for the applicant invited my attention to the *panchanama* regarding CCTV footage and cross-examination of the first informant and CCTV photographs. He submitted that according to the prosecution case, the applicant along with co-accused arrived at the scene of offence by one vehicle Scorpio and stepped down, and thereafter, attack was made on the deceased.

10. On perusing the CCTV footage *panchanama*, it would be clear that the applicant did not board the vehicle Scorpio to arrive on the spot. The CCTV footage *panchanama* and the images captured by CCTV camera shows that the applicant after looking the attack at crime scene went back and he did not participate in the alleged crime. The prosecution has falsely implicated the present applicant at the instance of first informant. The first informant has also admitted while facing the cross-examination that the applicant had taken turned around after witnessing the spot and he did not visit the spot of the incident. Mr. Ghanekar, therefore, vehemently submitted that the applicant has not participated in the alleged crime. The trial is now commenced. There is no need to keep the applicant behind the bars. He further invited my attention to the statement of one witness Shivaji

Raosaheb Khandagale, rickshaw driver dated 21.12.2017. He pointed out that the said eye witness did not disclose the name of the present applicant. Mr. Ghanekar, learned counsel for the applicant also invited my attention to the CCTV footage, more particularly the portion marked in the photographs and pointed out that the applicant was going back and not visited the crime scene.

11. Mr. Ghanekar further invited my attention to the fact that one co-accused has been released on bail by this Court who alleged to have taken part in the commission of offence. He, therefore, urged to release the present applicant on bail on the ground of parity.

12. Mr. Sangle, learned APP for the respondent / State assisted by Ms. Rashmi Kulkarni, learned counsel for the first informant strongly opposed to grant bail to the present applicant. Mr. Sangle invited my attention to the statements of witnesses recorded by the Investigating Officer. He pointed out that there are six eye witnesses who had seen the incident. All of them have stated the name of the present applicant with his role. The applicant alleged to have assaulted the deceased Ganesh Bhutkar by means of

wooden rafter. He had taken active part in assaulting the deceased with co-accused. He submitted that the CCTV footage is in respect of only entry and exit at parking place. The incident is not captured by CCTV camera. As such, no more weightage can be given to the *panchanama* of CCTV footage and the images relied upon by the learned counsel for the applicant.

13. He submitted that the cross-examination of the first informant is in progress. Whatever stated by the first informant PW-1 Rameshwar Bhutkar needs to be read as a whole and not in a peaceful manner. He further submitted that the evidence of remaining witnesses is yet to be recorded. It is a case of brutal murder in a broad day light. The role of present applicant is not only member of unlawful assembly, but also there was a common object in making attack on the deceased by using a weapon like wooden rafter. Mr. Sangle, learned APP submitted that it is not a fit case to grant bail when the trial is in progress.

14. Ms. Rashmi Kulkarni, learned counsel for the first informant relied upon the citation in case of ***Brijmani Devi Vs. Pappu Kumar and others*** (MANU/SC/1271/2021). She urged that the liberty of an individual is an invaluable right. At the same time, while

considering the application for bail, Courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly when the accusations may not be false, frivolous in nature, but are supported by adequate material brought on record so as to enable the Court to arrive at a *prima facie* conclusion. She submitted that to grant bail is a discretion of the Court, but it needs to be exercised in a judicious manner and according to well settled principles of law.

15. Having regard to the submissions of learned counsel for the applicant, learned APP for the respondent / State assisted by learned counsel for the first informant, I have carefully gone through the statements of the eye witnesses and orders passed earlier by this Court.

16. Accused no.2 / Pankaj Changdeo Bankar has been released on bail by this Court (Coram : M.G. Sewlikar, J.) vide order dated 22.11.2021 by allowing bail application no. 1123 of 2021. However, it is rightly pointed out by Mr. Sangle, learned APP that the first informant has moved an application for cancellation of his bail and that is subjudice before the Court in view of subsequent development after release of accused Pankaj Bankar. It is evident

from the record that first informant Rameshwar Bhutkar has filed application no. 213 of 2021 for cancellation of bail and the parties have been directed to file affidavits and now that application for cancellation of bail is fixed on 09.03.2022 for further consideration. In view of this background, the applicant cannot claim parity to release the applicant on bail.

17. It is rightly pointed out by Mr. Sangle, learned APP for State that Ghanesh Balasaheb Sonawane / accused no.7 has filed bail application no. 432 of 2019 and this Court was pleased to turn down that bail application under order dated 09.09.2019 observing that the recording of CCTV is to the extent of entry and exit of the deceased and some of the accused persons on the spot. It does not give clear picture. It is also observed by this Court that the incident is not recorded in the CCTV camera. This fact is also admitted by Mr. Ghanekar, learned counsel for the applicant. The entry and exit of the deceased and some of the persons at crime scene is only recorded in the CCTV cameras.

18. At this stage, it would be unsafe to rely upon the *panchanama* in respect of CCTV cameras and images referred by Mr. Ghanekar, learned counsel for the applicant. There are six eye

witnesses who have categorically stated about the aggressive role allegedly played by this applicant while making assault on the deceased by using wooden rafter. The depositions of those eye witnesses are yet to be recorded. The deposition of first informant who is also an eye witness is in progress. At this crucial stage of trial, it cannot be appropriate to go into the details of the CCTV footage and images and arrived at some conclusion when the incident is not recorded in the CCTV camera.

19. The law in regard to grant or refusal of bail is very well settled. In case of ***Kalyan Chandra Sarkar Vs. Rajesh Ranjan alias Pappu Yadav and Anr.*** Reported in ***(2004)7 SCC 528***, the Hon'ble Supreme Court has observed in para 11 as under:

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly, where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non application of

mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- a) The nature of accusation and 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 and Puran v. Rambilas, (2001) 6 SCC 338.”

20. Having regard to the facts and circumstances of the case in hand and in view of material collected by the Investigating Officer during the course of investigation and looking to the manner in which brutal murder alleged to have committed by the applicant, it is not a fit case to grant bail having regard to the nature of accusation and severity of the punishment and the nature of supporting evidence on record.

21. In case of *Brijmani Devi Vs. Pappu Kumar and others* (supra), the Hon'ble Supreme Court has observed in para 25 as under:

“25. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail Courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a Court to arrive at a prima facie conclusion. While considering an application for grant of bail a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-a-vis the offence/s alleged against an accused.

22. Even though there are no antecedents against this applicant, it cannot be overlooked that it is a case of brutal murder of Ganesh Bhutkar by a group of seven persons by forming unlawful assembly and by sharing common object. The trial has commenced. If the

applicant is released on bail, there is every possibility of tampering of prosecution witnesses.

23. Having regard to the above reasons and discussion, I am of the considered view that it is not a fit case to grant bail to the applicant.

ORDER

(i) The application moved by the applicant Bhaurao @ Dadashaheb Raybhan Dhamale @ Dadasheb Raybhan Dhamale in connection with Crime No. I-48 of 2017 registered with Shani Shingnapur Police Station, Dist. Ahmednagar is hereby rejected.

(ii) The bail application is accordingly disposed of.

(iii) The observations made by this Court are *prima facie* to the extent of deciding this bail application and trial Court shall not get influenced by those observations made by this Court.

[SHRIKANT D. KULKARNI]
JUDGE

S.P Rane