

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3677 OF 2021

Nadeem (Nadim) Ahmad Nasir Ahmad ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Mahendra Sandhyanshiv, for the Applicant

Mr. P.H. Gaikwad, APP, for the State.

Mr. A.M. Dhakue, PSI, Killa police station, Malegaon present.

CORAM : N. J. JAMADAR, J.

DATE : JUNE 27, 2022

P.C.:

1. The applicant who is arraigned in C.R. No. 447 of 2020 registered with Killa police station, Malegaon for the offences punishable under section 302 and 397 read with 34 of Indian Penal Code, 1860 seeks to be enlarged on bail.

2. The applicant and the co-accused have been arraigned for the aforesaid offences for having committed murder of Krushna Sonavane, the deceased husband of the first informant. The deceased was running a Pan Stall, Behind Hotel New Rajasthan, Malegaon Manmad Road. On 6th December, 2020 the first informant had gone to the stall and stayed there till 4 pm. On the next morning, at about 7 am the first informant went to the spot and found that the deceased was lying on the ground with multiple

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bleeding injuries. The first informant learnt that on the night intervening 6th and 7th December, 2020, a truck was stationed in the premises of Hotel New Rajasthan. In between 1.30 to 2 am four unknown persons had entered into the cabin of the said truck and assaulted the cleaner Nanak Kumar. The later informed that, since he had seen those four unknown persons committing murder of the deceased, one of the assailants exhorted that he be also killed.

3. The learned counsel for the applicant submitted that two incidents are not interconnected. In fact, the co-accused Riyan Ahmad was released on bail by this Court in Bail Application NO. 2462 of 2021 by an order dated 8th October, 2021, expressly noting the said fact that two incidents were distinct. The co-accused against whom identical allegations were made, was ordered to be released on bail and, therefore, the applicant is also entitled to the same dispensation.

4. In Bail Application No. 2462 of 2021 this Court, inter alia, observed as under:

4] Prima facie, it appears that place; one which had taken place at about 2 separate incidents had taken 1:30 a.m. to 2:00 a.m on 7th December 2020 i.e. assault on the truck driver and cleaner and second, the murder of deceased - Krishna,

which time is not known. Admittedly, the unknown persons including the applicant who allegedly assaulted the truck driver and cleaner, were not known to each other.

5] Learned Counsel for the applicant submits that Nanak Kumar has identified the said 4 unknown persons who assaulted him and in the supplementary statement dated 16th December 2020 has stated that he learnt that the very same persons had also murdered deceased - Krishna. As far as murder of deceased - Krishna is concerned, prima facie, there is nothing on record to show that the applicant was involved in the same. Prima facie, it appears that the applicant was one of the persons who committed an offence under Section 397 of the Indian Penal Code i.e. assault of the driver and cleaner of the truck and Nanak Kumar has identified the said applicant in the Test Identification Parade, as being one of the persons who had attacked him when he was sleeping in the truck. The applicant has no antecedents. Investigation is complete and charge- sheet is filed and as such further detention of the applicant is not warranted.

5. I have perused the report under section 173 of the Code and the documents annexed with it. The aforesaid reasons apply with equal force to the case of the applicant in as much as the allegations against the applicant are identical with those against co-accused Riyal Ahmad, who is released on bail. Prima facie, it appears that two incidents are distinct. The complicity of the applicant and the co-accused in this case, is sought to be established by banking upon the statements of Nanak Kumar, the victim in another incident. A prima facie case is, therefore, made out, on merits as well. Hence, I am inclined to exercise the discretion in favour of the applicant.

Thus, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant be released on bail in C.R. No. 447 of 2020 registered with Killa police station, Malegaon on furnishing a P.R bond in the sum of Rs. 25,000/- and one or two sureties in the like amount, to the satisfaction of learned Magistrate.
- 3] The applicant shall regularly attend the proceedings before the jurisdictional Court.
- 4] The applicant shall furnish his residential address and contact details to the investigating officer of Killa police station within a period of eight days from his release and shall keep the police station updated about any change therein.

5] The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

6] The applicant shall not contact the first informant and any of the prosecution witnesses.

7] The applicant shall mark his presence at Killa police station, Malegaon on the first Monday of every alternate month in between 10 am to 11 am for a period of eight months or till the conclusion of trial whichever is earlier.

(N. J. JAMADAR, J.)