

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.275 OF 2023

Aashish Rajendra Jadhav,
Age 30 years, Occu. Service,
R/o. Mamta Nagar,
Juni Sangvi, Pune

.. Applicant
(Original Accused No.6)

Versus

The State of Maharashtra
Through Officer-in-charge,
M.I.D.C. Police Station, Latur

.. Respondent

Dr. R. R. Deshpande holding for Mr. Bhagwant Deshpande,
Advocate for Applicant;
Mr. S. P. Deshmukh, APP for Respondent

CORAM : S. G. MEHARE, J.

DATE : 13-03-2023

PER COURT :-

1. The applicant is seeking bail in connection with C.R.No.382 of 2019 registered at M.I.D.C. Police Station, Latur, for the offences punishable under Sections 302 and 120B of the Indian Penal Code.
2. Heard the learned counsel for the applicant at length.
3. After hearing the learned counsel for the applicant, the Court expressed disinclination to grant bail, the learned counsel for the applicant, sought time to take instructions. He had instructions to withdraw the application, but he started again arguing the case. Such a practice is condemned. However, to protect the interest of litigant, the Court heard him again.

4. Heard the learned A.P.P. for the respondent/State.

5. The prosecution case, in brief, is that on the day of the incident, the deceased was killed using a four-wheel car. The persons present on the spot of the incident apprehended co-accused Gaurav Kailas Lohar. He was driving the said vehicle. He immediately disclosed the name of the present accused, who fled away from the spot of the incident. It is alleged against the applicant that some accused are behind bars in the murder of Akash Janardhan Sathe, who was the son of the deceased. They threatened the deceased and the witnesses to take the case back, and they refused to withdraw the case. Therefore, those accused, in conspiracy with the present applicant and other co-accused, have murdered the deceased, pretending it was a road traffic accident. The prosecution also has a case that the applicant had purchased the vehicle involved in the crime only to commit the murder.

6. The learned counsel for the applicant would argue that it was purely a road traffic accident. The applicant has no concern with the accused, who are behind bars for the murder of Aakash Janardhan Sathe. There were 15 accused of the crime. Out of them, accused Nos. 2, 3, 4, 5, 7, 8, 11, and 15 have been released on bail. The applicant has been languishing in jail since 10.11.2019. The First Information Report (FIR). It's minute

observation reveals that it was not a homicidal but an accidental death. He referred to the spot panchnama and tried to argue that it was barely a road traffic accident. It was not an intentional act. It would be very difficult to accept that it was a deliberate act. He would also refer to the MLC report of Vivekanand Rugnalaya, wherein the name of the first informant has been shown as a relative of the deceased. He informed the hospital that it was a road traffic accident. There was 24 hours delay in lodging the FIR. The informant learnt about the incident within a minute, but there is no explanation for the delay in lodging the FIR. The applicant had been named in the FIR on hearsay. Though the witnesses have stated that they may identify the applicant, no identification parade has been held to date. Nothing has been recovered from the applicant. One of the witnesses, Kailas stated that co-accused Gaurav assaulted him on the chest, but the prosecution has no evidence to substantiate said allegation. The prosecution did not examine the registered owner of the vehicle, which met with an accident.

7. He advanced the novel argument that the observation of the learned Sessions Judge that the applicant was driving the vehicle shall be set aside if the Court is not inclined to grant the bail. The Court questioned the learned counsel for the applicant, under which provision the order of the learned Sessions Judge under section 439 Cr.P.C. can be set aside. He made a statement that the

Court could do anything but unfortunately failed to point out the provision of law. The present bail application under Section 439 of the Cr.P.C. is after rejecting the bail by the learned Sessions Court under the same section. It is neither appellable nor revisable. Hence, his arguments have been discarded.

8. He has also referred to earlier order dated 08.12.2020 passed by this Court (Coram : V. K. Jadhav) in bail application No.1337 of 2020 of co-accused Dipak Devendra Gavali and pointed out that there is no witness from the village disclosing that on an earlier occasion and the date of the incident, the applicant had done *reiki* in the village. It is for the trial Court to consider whether the alleged incident was a vehicular accident or a deliberate act in the prosecution of the conspiracy hatched by the accused persons during the course of the full fledged trial of the case. Interpreting the said order, he has tried to argue that the Court has accepted the case that it was a vehicular accident, but this Court believes there were no observations as such.

9. He would also refer to the order of this Court in bail application No.399 of 2021 dated 31.03.2022, (Somnath s/o. Gopal Sathe Vs. State of Maharashtra), and refer to observations in paragraph No. 10 that at this *prima facie* stage, it is difficult to accept that applicant Nishant had financed to purchase Tata Safari car and the present applicant/accused Ashish Jadhav has

purchased it. The first informant Namdev Sathe while admitting his father i.e. deceased Janardan Sathe, in the hospital, had given the history of a road traffic accident which belies the theory of conspiracy. Further, it has been observed in the said order that statements made by the persons arrested are not admissible in evidence. However, such a statement made by the co-accused prior to their arrest by police is admissible in evidence. The said applicant Somnath and others were arrested with the allegations that they had hatched the conspiracy. Definitely, hatching the conspiracy and executing the conspiracy through another are distinct aspects. The prosecution has a specific case that the applicant was in the vehicle when the murder was committed. The co-accused, who was immediately apprehended by the persons present on the spot of the incident, disclosed the name of the present applicant. Therefore, his statement may not be thrown at this stage.

10. As far as the arguments of the learned counsel for the applicant that co-accused have been released on bail, their role is apparently different. Hence, the applicant cannot get the benefit of those orders.

11. The law is well settled that any observations recorded by the Court in the absence of a party in a dispute, are not binding either upon the said person or the opponents. Therefore, the arguments

of learned counsel Mr. Deshpade for the applicant that the observations recorded in the above orders are binding on the prosecution are illogical and, hence, discarded.

12. Per contra, the learned A.P.P. would argue that the applicant was named in the register of the lodge. The applicant did not deny that he was present at the time of the incident in Latur. In a register recovered from the said lodge, the reason for their arrival was for function. As regards this, the learned counsel for the applicant would argue that the applicant was in private business. Hence, he had been in Latur with his friends. The learned A.P.P. has further argued that four persons stayed in the lodge, but only two persons i.e. present applicant and one driver, were seen on the spot of the incident. These are the strong circumstances that show that it was a pre-planned action.

13. He also referred to the statement of witness Sagar Tattedar of Latur, demonstrating that co-accused Gaurav Lohar replaced one bumper of the car. He has also argued that it was barely not an accident. The present applicant had no reason to flee away from the spot of the incident. The conduct of the applicant shows that he had ill intentions to kill the deceased.

14. Relying upon the statement of the witness again, the learned counsel for the applicant would argue that another co-accused Dipak Gavali was named in the register of the lodge. However, he

has been released on bail. He referred to orders in the bail application again.

15. The prosecution has witnesses who were on the spot of the incident. They apprehended one of the co-accused, Gaurav, who immediately disclosed the applicant's name. Therefore, his statement is material to consider the role attributed to the applicant. *Prima facie*, it appears that the reason for their arrival written in the register of a lodge appears incorrect. There is a contradiction in the statement of the learned counsel for the applicant on the reason for his arrival in Latur and mentioned in the lodge register. That raises serious doubts about the applicant. Whether the incident is a road traffic accident or a murder is a matter of trial. It is by way of the defence of the accused. While considering the bail application, the Court has to consider *prima facie* material. It need not go into detail examination of the evidence minutely as if it was a trial.

16. As far as identification is concerned, it seems immaterial, at this juncture, for the reason that the co-accused has named the applicant and his corroborates his name with the register of the lodge. If the applicant did not purchase the vehicle from the registered owner, then the question arises why did he bring the vehicle to Latur. Instead of reaching the police station, the applicant fled away. There are a number of witnesses who have

categorically stated how the incident happened. At this juncture, the prosecution case cannot be discarded. *Prima facie*, the prosecution has sufficient evidence to satisfy that though the incident has allegedly been pretended to be a road traffic accident. The possibility of murder cannot be ruled out.

17. After having gone through the material and the circumstances available before the Court, the Court is not satisfied that this is a fit case for granting bail. Hence, the application stands dismissed.

(S. G. MEHARE)
JUDGE

rrd