

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

38 BAIL APPLICATION NO.371 OF 2023

AZHAR KHAN AYUB KHAN
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Bhosle Abhaysinh K.
APP for Respondent-State : Mr. S. P. Deshmukh.
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CORAM : S. G. MEHARE, J.
DATE : 27.03.2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the respondent-State.
2. The applicant has been arraigned as an accused of the offence of murder. It has been alleged that the accused and other co-accused were committing theft. They had suspicion that the deceased was the informant of the police. Therefore, he has been eliminated. The wife of the deceased is the sole eye witness to the incident. Her statement reveals that the incident happened in an open space. When three persons were assaulting her husband, about 8 to 10 persons were gathered there. However, prosecution has not examined any one of them. She witnessed the incident, but did not lodge the report

immediately. Hence, her presence on the spot of the incident falls under the shadow of doubt.

4. The earlier order dismissing the bail of the co-accused of this Court dated 18.08.2021 would not come in his way as the liberty was granted to the said co-accused to move an application for bail before the Sessions Court, if the trial is not concluded within one year. This Court also observed that if an application as such is filed, the learned Sessions Court shall consider the same on its own merits. Considering this order, the Court is of the view that the applicant may claim the bail on merit.

5. The applicant is an accused in the crime of murder on bare suspicion. The conduct of the wife of the deceased, seems unnatural. The reason best known to her why she did not lodge the report forthwith when she had witnessed the incident. Till date, the charges have also not been framed. In the facts and circumstances of the case, it would be unreasonable to keep the applicant behind bar. Hence, the following order :

ORDER

- (i) Bail Application is allowed.

(ii) Applicant **AZHAR KHAN AYUB KHAN** be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount, in Crime No.33 of 2020, registered by Police Station Savada, District Jalgaon, for the offences punishable under Sections 302, 120-B read with Section 34 of the IPC, on the following conditions :

- (a) The applicant shall not tamper with the prosecution witnesses.
- (b) He shall not contact the wife of the deceased till the conclusion of the trial.

(S. G. MEHARE, J.)

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vmk/-