

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

912 BAIL APPLICATION NO.503 OF 2023
WITH APPLN/1249/2023 IN BA/503/2023

MARKANDEY S/O NARAYAN IRBATANWAD
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. More P P
APP for Respondent-State : Mr. K. S. Patil.
Advocates for Complainant to assist APP : Mr. Anand Chawre,
Ms. Vandana Sadawarte.

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CORAM : S. G. MEHARE, J.
DATE : 30.03.2023

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and the learned counsel for the complainant.
2. The complainant and the family of the main accused, who is father of the present applicant have serious differences.
3. It has been argued by the learned counsel for the complainant that earlier he lost his brother in 2011 and thereafter, he lost his son at the hands of the applicant and his family. Therefore, there was a danger to the lives of the family members of the complainant and there is a great possibility of tampering with the witnesses. The offence is serious. The

applicant was providing finance under the direction of his father, who is the main accused. He was all the while present, where the conspiracy was hatched. There is a direct evidence of the witness, who had seen the applicant present in the hotel, where conspiracy was hatched. Considering the past history of the dispute between two families and the evidence collected by the prosecution is sufficient to believe that the applicant was the member of the conspiracy and he followed the execution of the commission of the offence as determined.

4. Learned APP also argued on the same line. In addition thereto, he would argue that one of the co-accused named the applicant in his statement and the applicant has also confessed before the police. Office is serious. It would not be safe to release the applicant on bail to protect the family of the complainant and the witnesses.

5. Learned counsel for the applicant would submit that the applicant has no concern with the alleged incident. He is a meritorious student having no antecedents to his discredit. The evidence collected against him is not sufficient to believe that he was a member of the conspiracy. Since there was rivalry between two families, the applicant has been made a scapegoat. The confessional statement and the statement by

co-accused is inadmissible. That apart, the charge sheet has been filed. Nothing is recovered from him. The offence registered against the applicant is serious. He is allegedly the member of the conspiracy. The prosecution has a statement of Manager of the hotel, where the alleged conspiracy was plotted. The applicant had shown the said place. Actually, it was a public place, where everybody had an access. Be that as it may, bare statement of the witness that the applicant was there with the other persons, who were parting there may not be a substantial evidence against him. The statement of the co-accused and confession by the applicant is undisputedly inadmissible. For the purpose of the bail, the Court has to examine the *prima facie* facts and material collected against the accused. In view of the fact of the case and considering the material placed on record, the Court is of the view that though the offence is serious, the statement of the sole witness without corroborative evidence is insufficient to keep the applicant behind bar. However, the apprehension of the family of the complainant of threat to their life, may be guarded by imposing certain conditions. In view of the discussion above, the application deserves to be allowed. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant **MARKANDEY S/O NARAYAN IRBATANWAD** 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.97 of 2022, registered by Police Station Chakur, District Latur, for the offences punishable under Sections 302, 201, 120-B, 212, 216 read with Section 34 of the IPC and Sections 3(1)(i), 3(2), 3(3), 3(4) of the Maharashtra Control of Organized Crime Act, on the following conditions :
 - (a) The applicant shall not tamper with the prosecution witnesses.
 - (b) He shall not contact his family, any witnesses, in any mode or manner for the period of one year.
 - (c) He shall not enter Taluka Ahmedpur except for his B.Sc. First Year Examination for the period of one year from the date of his release.

- (iii) Criminal application No.1249 of 2023 to assist the learned APP is allowed.

(S. G. MEHARE, J.)

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vmk/-