

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.565 OF 2023
WITH APPLN/1253/2023 IN BA/565/2023

SADIK ISAMODDIN SHAIKH
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Satej S. Jadhav
APP for Respondent/State : Mr. K. S. Patil
Advocate for complainant : Mr. Anand Chawre
...

CORAM : S. G. MEHARE, J.

DATE : 28-06-2023

PER COURT :-

1. Heard the learned counsel for the applicant, the learned A.P.P. for the respondent/State and the learned counsel for the complainant.
2. The applicant is seeking bail in C.R.No.0097 of 2022 registered with Chakur Police Station, District Latur, for the offences punishable under Sections 302, 201, 120B read with Section 34 of the Indian Penal Code and Sections 3(1)(i), 3(2), 3(3), 3(4) of the Maharashtra Control of Organised Crime Act, 1999.
3. It is a case of second murder of the family member of the first informant/complainant. The prosecution case rests upon the circumstantial evidence. The Investigating Officer collected the

relevant evidence and arrested the accused. It was transpired that the main accused had hired the killer. There was a dispute regarding boundary of the plot. The allegations levelled against the applicant were that he had sold a land to the main accused for which the incident happened. Further, it has been alleged that he was a member of hatching the conspiracy to eliminate the deceased. On the basis of the statement under Section 27 of the Indian Evidence Act, the Investigating Officer has confirmed that he was the member of the conspiracy. Besides this, since there were property transactions between the applicant and the main accused, he was arraigned as an accused with allegations that he played role in committing the murder of the deceased.

4. The learned counsel for the applicant would submit that the applicant never sold the land allegedly was the reason of incident in the present crime to the main accused. However, he had sold the land to the main accused in 2010, adjacent to the land for which the incident happened. He would also submit that there were civil disputes about lands. He has no concern with the alleged incident. He was never the member of the conspiracy. Similarly situated co-accused have been granted bail. Nothing is to be recovered from him. Hence, he may be released on bail.

5. The learned counsel for the complainant has vehemently opposed the application. He would deny the submission of the

learned counsel for the applicant that he never sold the disputed land to the main accused. He would argue that the applicant is the main person behind the curtain. The civil disputes are yet not finally concluded. The civil court has to decide the dispute which land the applicant sold to the main accused. He would argue that the applicant had sold the land to the main accused nominally for which the dispute was going on. His statement under Section 27 of the Evidence Act clearly establishes that he was the member of conspiracy and at his instance the place where the conspiracy plotted was discovered. He referred to the 7/12 extract of the property of CTS No.564 of village Shirur Tajband. The copies of criminal case in which the present applicant and the co-accused were involved, has been placed on record. The learned counsel for the complainant referred to the facts of this case and argued that this applicant is involved in the property crimes. Therefore, though he has been acquitted, it is the best evidence of his conduct.

6. The learned A.P.P. also submitted that there were civil suits about land between the applicant and one Kantabai.

7. The learned counsel for the complainant would submit that Kantabai sold land to the present applicant and the applicant sold the land to the main accused. No such land was in existence. Hence, the applicant tried to encroach upon the land of the

complainant.

8. Perused the papers.

9. *Prima facie* it appears that the applicant had no interest in any land and there should not be, since his interest ceases soon after the transfer of the land. Whether the transaction between the applicant and the main accused is nominal, is a matter of civil dispute. Except the statement under Section 27 of the Evidence Act, the prosecution has no other evidence to link the applicant with the alleged incident. The Court need not comment on the evidentiary value of the statement under Section 27 of the Evidence Act. The place which was allegedly shown by the applicant was a beer bar knowing well to the public. Except the allegations of setting the conspiracy, there is nothing on record that the applicant was involved in executing the conspiracy. The similarly situated co-accused have been granted bail.

10. For the discussion made here-in-before, the Court comes to the conclusion that the applicant deserves the bail on parity and merit. Hence, the order:-

- i) Bail application is allowed.
- ii) Applicant Sadik Isamoddin Shaikh be released on bail, on furnishing PB and SB of Rs.50,000/-, with one solvent surety of the like amount, in C.R.No.0097 of 2022 registered with

Chakur Police Station, District Latur, for the offences punishable under Sections 302, 201, 120B read with Section 34 of the Indian Penal Code and Sections 3(1)(i), 3(2), 3(3), 3(4) of the MCOCA Act, on the conditions that,

- (a) He shall not tamper with the prosecution witnesses.
 - (b) He shall not contact the family members of the deceased or any witnesses in any mode or manner for the period of one year.
 - (c) He shall not reside in Ahmedpur Taluka for a period of one year from the date of his release.
- iii) Criminal Application No.1253 of 2023 stands allowed.

(S. G. MEHARE)
JUDGE

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