

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

BAIL APPLICATION NO.917 OF 2023

**PARMESHWAR DAGADU RATHOD
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr. Pratap Vikhe Patil h/f Mr. Salunke
Sudarshan J.

APP for Respondent/State : Ms. V.N. Patil Jadhav

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CORAM : S.G. MEHARE, J.

DATED : JUNE 15, 2023

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the State at length.
2. The applicant is seeking bail in Crime No.120 of 2023 registered with Sonpeth Police Station, District Parbhani for the offence punishable under Section 304, 337, 338 of Indian Penal Code and Section 9 of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act.
3. The applicant has a case that he was the owner of the farmhouse. He never engaged the so-called scavengers to clean the septic tank. His brother without his knowledge engaged them as they told him that they have the experience to clean the septic tank. Unfortunate incident happened. While cleaning the septic tank, one

of the employee/person engaged fell in the tank and in turn second went inside the tank to save him and it went on and five persons died. The applicant has a case that he never had an intention to kill the employees. They were engaged by his brother on a contract of Rs.12,000/-. The applicant was not present on the spot of the incident. Nothing is to be recovered from the applicant. Hence, he may be granted bail.

4. Learned APP has strongly opposed the application contending that five persons have lost their lives. The employment of the scavengers has been strictly prohibited under the above Act. Section 9 thereof provides the conviction for two years and the offence is non-bailable. The applicant cannot deny the responsibility as it is presumed that he had knowledge of engaging the labours to clean the septic tank in his farmhouse. The offence is serious. Hence, he may not be granted bail.

5. The Court has full sympathy with the labours who died in the septic tank. However, law prevails over all. Considering the facts of the case, it appears an accident. So it would be difficult at this juncture to believe that the applicant has committed the offence under Section 304 of Indian Penal Code. The offence punishable under Section 9 of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act provides the maximum punishment of two years. Hence, the said offence is bailable.

Keeping the applicant behind bar would serve no purpose. The family members of the employees who have lost the lives have the legal remedies under various Acts. For the above reason, the Court is of the view that the applicant shall be released on bail. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Parmeshwar Dagadu Rathod, be released on bail on executing P.B. and S.B. of Rs.50,000/- (Rupees fifty thousand) with one solvent surety in the like amount in connection with the above crime, on the conditions he shall not tamper with the prosecution witnesses.
- (iii) The applicant shall support and cooperate the investigating agency and the officers engaged under the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act .

(S.G. MEHARE, J.)