

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

BAIL APPLICATION NO.1084 OF 2023
WITH APPLN/2780/2023 IN BA/1084/2023

PRASHANT @ PRASHYA MAHADEV BARDE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr, Sabale Sarita Shesharao
APP for Respondent: Mr. K. S. Patil

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CORAM : S. G. MEHARE, J.
DATE : 17.08.2023

PER COURT :

1. Heard the learned counsel for the applicant and the learned A.PP for the respondent State.
2. The applicant seeks bail in Crime No. I-19/2017 registered with Police Station, Parner, District Ahmednagar for the offences punishable under Sections 143, 147, 148, 149, 302, 120-B, 109 of the Indian Penal Code and under Sections 3/25, 4/25 of the Arms Act and under Section 3(1)(i)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999.
3. The applicant was arrested on 21st January 2017. Since then, he ever not applied for bail. The applicant was behind the bars in another crime. Recently, he has been granted bail in that crime.

Hence, he approached this Court.

4. The learned counsel for the applicant would submit that the role attributed to the co-accused Rishikesh @ Bhaiya Subhash Bhosale who has been granted bail and his role is similar. She would vehemently argue that the eyewitnesses are not consistent as regard the role attributed to the applicant. He has been falsely implicated in the said offence. He has no role to play in the crime. He was not identified. The applicant was not holding any weapon. The evidence as regard the hatching the conspiracy against the applicant is missing. Recovery at the instance of the applicant would not help the prosecution to prove the case beyond a reasonable doubt. There is no material to connect the applicant under the provisions of the Maharashtra Control of Organized Crime Act, 1999. She has also argued that there was no embargo under Section 21(4) of the MCOC Act 1999 while dealing with the present application. There is no material to show that the organized crime was intended to be committed and action of the applicant was towards making preparations for commission of such organized crime. There was no material with prosecution to apply Section 3(4) of MCOC Act. The evidence regarding the applicant being member of the Organized Crime syndicate is also missing. He is not held guilty in any offence.

Vague allegations have been levelled against him. There is no progress in the trial. Hence, he may be granted bail.

4. The learned A.PP and the learned counsel for the victim have strongly opposed the application. They would submit that the roles attributed to the co-accused Bhaiya Bhosale and present applicant are altogether different. The co-accused Bhaiya Bhosale was captured in the CCTV footage but it was blurred; hence, he could not be identified. There are witnesses to the incident stating the specific role attributed to the present applicant. All the accused, in consultation with each other, were protracting the trial. The applicant had not claimed bail at the earliest. The prosecution cannot be balmed for protracting the trial. The offence is serious. The applicant has been identified as he was knowing to the witnesses since prior to the incident. It was a brutal murder and causing grievous injury on the person of the deceased. All the applicants come to saloon shop where the deceased was shaving. It was a pre-planned and well organized crime. Similar crime is on the discredit of the applicant. The offence is grave and serious. The prosecution never delayed the trial. Even today the prosecution is ready to commence the trial but due to the simultaneous application filed by the various accused, the trial could not be progressed. The application deserves to be dismissed.

5. Perused the charge sheet. The role attributed to this applicant is different from the co-accused Bhaiya Bhosale. Hence, no parity can be extended. The eyewitnesses are consistent as regards the role attributed to the applicant. He was present on the spot of the incident. The accused caused 19 injuries to the deceased and the applicant caused injuries to the deceased with sharp edge tiles. It was a brutal murder.

6. Deadly weapons like pistol, sickle and sharp tiles have been used in the crime. The applicant has a bad past. There appears substance in the submission of the learned A.P.P. as regards protracting of the trial. The offence is serious. The papers attached with the charge sheet reveal that due to the acts of the accused, a terror was created in the locality, therefore, there may be a great possibility of tampering with the prosecution witnesses.

7. For the above reasons, the application stands dismissed.

8. Criminal Application No. 2780 of 2023 Stands allowed and disposed of.

ysk/

(S. G. MEHARE)
JUDGE