

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

922 BAIL APPLICATION NO.1188 OF 2023

DEVA @ KALYA JAINU KALE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. S.A. Gaikwad
APP for Respondent: Mr. S.P. Deshmukh

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CORAM : S. G. CHAPALGAONKAR, J.
Dated: September 26, 2023

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PER COURT :-

1. The applicant is seeking regular bail in connection with Crime No.270 of 2021 dated 2.7.2021 registered with Vaijapur police station, District Aurangabad for the offences punishable under sections 302, 394, 457, 458, 459, 460, 34, 307, 120-B of the Indian Penal Code.

2. Investigation was set in motion on the basis of the information given by one Jijaram Gorse, who states that he resides in his field at Khabala Phata alongwith two daughters, son and daughter-in-law. It is alleged that on 2.7.2021 at about 12.30 hours he heard sound of the door. He found himself locked in the room. He attempted to call his son Rajendra, however, there was no response. Thereafter, neighbours arrived. They unlocked the door of his room. When they entered in the room of their son and daughter-in-law, both of them were found in injured condition. They had suffered injuries on their head. Blood was oozing. Both of

them were unconscious. He also noticed that articles kept in the cupboard were disturbed. When his son-Rajendra and daughter-in-law were taken to the hospital, doctor declared Rajendra to be dead, whereas daughter-in-law Monika was kept under medical supervision. On the basis of the aforesaid information, offence came to be registered against unknown persons. Investigation progressed. After due investigation, charge-sheet came to be filed. In all four accused persons were arrested including the applicant. The applicant has been arrested on 5.7.2021. Since then he is behind bar. Other accused persons are released on bail by orders of this Court or Sessions Court. Prayer of the applicant for grant of bail has been rejected by the learned Sessions Court vide order dated 23.5.2023. Hence, this application.

3. Learned advocate appearing for the applicant would submit that the applicant has been falsely implicated in the aforesaid crime. Investigation is completed. Charge-sheet is filed. Other three accused persons are already released on bail. He would submit that only evidence claimed against the applicant is so called recovery of jeans pant, alleged to have stained with blood and DNA report confirming that it match with the blood of the deceased. He would point out that the recovery panchanama dated 5.7.2021 depicts recovery of in all four articles from the place at Mouje Adsuregaon, which according to the applicant unconcerned with him. Therefore, such recovery is of no-consequence to link the accused with the alleged crime. He would submit that recovery is not from the

person of the accused, but it was from the place which has no concern with the accused. Learned advocate appearing for the applicant would further submit that other accused persons, including accused from whom there is recovery of the clothes, are already released on bail. Even on the parity the applicant would be entitled to be released on bail.

4. Learned A.P.P. strongly opposes the prayer for grant of bail. He would point out that recovery of the blood stained Jeans Pant coupled with forensic report confirming blood stains of the deceased is sufficient to show complicity of the applicant in commission of the offence. Learned APP points out that the applicant is a habitual offender and as many as five cases are registered against him. He would therefore urge to reject the prayer for bail.

5. Having considered the submissions advanced, apparently, the applicant has been arrested on 5.7.2021 in pursuance of registration of crime. Pertinently, initially, offence was registered against unknown culprits. After arrest of the applicant, recovery panchanama u/s 165 of Cr.P.C. appears to have been prepared. Place of seizure is shown as Adsuregaon, field bearing gat no.56. Jeans Pant, Torch, a motorcycle and T-Shirt are the articles seized under the panchanama. As pointed out by the learned APP, there is statement of Dattu Koushiram Chavan, who states that the applicant was residing in his field situated at Gat no.56, village Adsuregaon. Conversely, a receipt (muddemal Yadi) shows that the recovery is from the house of the applicant situated at Biloli Shivar which is totally

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different place. Pertinently, there are no statements of the witnesses to this panchanama in the charge-sheet. There is glaring inconsistency regarding place of recovery in the documents i.e. panchanama itself and the receipt (muddemal yadi). Although, jeans pant was having blood stains and DNA report shows that it matches with the blood of the deceased, it is difficult to hold that recovery of said articles is from the accused in view of the aforesaid inconsistency. Although, accused was arrested on 5.7.2021, discovery is not made under section 27 of the Evidence Act. Except the aforesaid evidence, there is nothing in the entire charge-sheet by which the applicant can be linked with the offence in question. Even, identification parade is not conducted during the course of the investigation. The description of the accused persons is also not appearing in statement of witnesses. Except so called seizure panchnama, no evidence is available to link the applicant. The applicant is behind bar from last more than two years. Trial would take its own time. Other accused persons are already released on bail. In that view of the matter, case is made out for grant of bail. Since there are previous offences registered against the applicant, stringent conditions are required to be imposed. Hence, the order.

O R D E R

- i. Criminal Bail Application is hereby allowed.
- ii. The applicant - DEVA @ KALYA JAINU KALE be released on bail in connection Crime No.270 of 2021 dated 2.7.2021 registered with Vaijapur police station, District Aurangabad for the offences

punishable under sections 302, 394, 457, 458, 459, 460, 34, 307, 120-B of the Indian Penal Code on his furnishing P.R. & S.B. in the sum of Rs.50,000/- (Rs. Fifty Thousand) on the following conditions :-

- a] The applicant shall not tamper with the prosecution evidence in any manner.
 - b] The applicant shall visit concerned police station on 5th day of every month and update his contact numbers and residential address.
 - c] The applicant shall not leave the state of Maharashtra without intimation to the concerned police station.
 - d] The applicant shall attend each and every effective date of trial before the sessions court.
 - e] He shall co-operate for early disposal of the case.
 - f] He shall not establish contact with any witnesses named in the charge-sheet.
- iii. Bail application is accordingly disposed off.
- iv. The observations made here-in-above are on prima facie consideration of materials in the charge-sheet and it is only for the purpose of disposal of this application.

(S. G. CHAPALGAONKAR)
JUDGE

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