

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

BAIL APPLICATION NO.1259 OF 2023

VISHAL SURESH PATOLE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. P. D. Digaskar
APP for Respondents : Ms. P. V. Diggikar
Mr. R.A. Karwa advocate for complainant.

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CORAM : S. G. CHAPALGAONKAR, J.
Dated : September 08, 2023

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PER COURT :-

1. The applicant is seeking regular bail in connection with Crime No.0120 of 2021 registered with Sailu Police Station, District Parbhani for the offence punishable under sections 302, 201, 326, 203, 304-A, 403, 465, 471 of the IPC.

2. The investigation was set in motion on the information given by one Satish Karwa, wherein it was alleged that the deceased was dashed by a Truck bearing registration No.MH-22/AN-8085. He suffered fatal injuries in the said accident. However, subsequently, it was transpired that the deceased was killed since the accused no.1 had hatched the conspiracy and with the aid of other accused persons committed murder of the deceased under the pretext of the motor vehicular accident. During the course of the investigation, the applicant has been arrested on 3.8.2021. The gist of the allegations in the charge-

sheet would show that on instructions of the king-pin accused Rahul Kasat applicant participated in the conspiracy. A farce has been made of the accident. The applicant has actually hit a stone on head of the deceased and another accused Vinod Ambhure hit on head of the deceased thereby using the rod. During the course of the investigation, memory card containing conversation recording between the accused persons has been collected. The CDR regarding mobile phones to find out their locations at the relevant time is collected. The part of the amount that was paid to assailant in pursuance of the contract of killing has been recovered. The voice detention report from the Laboratory are made part of the charge-sheet. It is informed that the programme of the Trial is fixed, however, because of the pendency of the bail application, the Trial has been postponed at the instance of the accused persons.

3. Mr. P. D. Digaskar, learned advocate appearing for the applicant would submit that initially an offence under section 304-A and 437 of the I.P.C. was registered on the basis of the information given by brother of the deceased. The registration of the offending truck involved in accident is specifically stated. Two eye witnesses are also named who witnessed the accident. However, by way of supplementary statement entire tenor of the accidental death has been changed making allegations of conspiracy for murder. He would further submit that the applicant has been falsely implicated in the present case. There is no material on record that would to bring home the guilt against the applicant/accused. He would submit that, more than two years,

the applicant is behind bar. The Trial could not be commenced. The co-accused are already released on bail by order of this Court. Hence, he urged for grant of bail to the applicant.

4. Per contra, learned APP would submit that case of the prosecution is based on circumstantial evidence. The applicant is the main assailant, who hit stone on the head of the deceased and other accused hit on head of victim using iron rod. The cause of death is attributable to such injuries. He would further submit that, mobile conversation of the applicant/accused with co-accused person show that the applicant actively participated in conspiracy of murder. The script of conversation show that the applicant was called by the co-accused alongwith the motorcycle. The tower location of the mobile phone of applicant shows that the applicant was within the vicinity of the spot of the incident. The voice recording in the mobile conversation was sent for the expert evidence. The report states that the voice of the applicant matches with the persons in conversations regarding conspiracy.

5. Learned advocate appearing for the complainant would submit that on 15.12.2022 Trial Court has imposed costs of Rs.10,000/- to the present accused for delaying the Trial. When the Trial was fixed as per the programme, the application for bail has been moved on behalf of the applicant with intention to drag the trial. The Sessions Court in the order below exh.80 has specifically observed about protracting tactics are practiced on

behalf of the applicant/accused. He would, therefore, urged to reject the application for bail.

6. Having considered the submissions advanced, it can be observed that the Trial Court has fixed the programme of Sessions Trial on 18.8.2023 to take up evidence on day-to-day basis w.e.f 1.9.2023. Previously the Trial has been protracted for one and other reason. So far as the merits of the present application are concerned, apparently, the applicant is alleged to be the main assailant, who is responsible for death of the deceased. The applicant alongwith co-accused provided the contractual services to main conspirator for committing the murder of the deceased. Amount of Rs.80,000/- is alleged to have been parted to the applicant for performance of his role. The statement of his brother is recorded to that effect. The material in the charge-sheet mainly contains the mobile conversation between the applicant and the co-assailant. The script of conversation shows that the applicant was called alongwith motorcycle towards the spot of the incident. Mobile tower locations based on CDR report shows that the applicant was present in the vicinity. Statement of the brother of the applicant shows that the contractual amount received by the applicant was utilized by him and some part thereof was paid to the mother.

7. Voice sample of the call recording is made part and parcel of the charge-sheet. The report confirms that voice in the mobile conversations appearing in the call recording matches with

the voice of the applicant. The mobile conversation between main accused Vishal Kasat and Vinod Ambhure clearly depicts role assigned to applicant and his participation. Prima facie, there is material to indicate that the applicant is a part of the conspiracy and discharged the main role in commission of the murder of the deceased. The charge for the offence u/s 120-B is invoked in present case.

8. It is true that this Court released some of the accused named in the charge-sheet. Learned advocate appearing for the applicant submit that the applicant would be entitled for bail on the ground of parity. He would further submit that once the charge-sheet is filed and co-accused is released on bail, the Court would only consider as to whether continuing detention of the accused was necessary despite release of the co-accused. In support of such submissions, he relies upon the order passed by the *Supreme Court of India in @ Special Leave to Appeal (CRL) No.1830 of 2023 in case of Shahrukh @ Banti Vs. State of M.P dated April 27, 2023*. However, on perusal of the order passed by this Court while releasing accused Rajabhau Khandagale dated March 23, 2023, apparently this Court observed that the applicant is a driver of Jeep and made accused on the ground that said jeep was used in the commission of the offence but overall material collected by the prosecution is not satisfactory to believe that applicant has deliberately caused the accident and killed the deceased. It is further brought to the notice of this Court that the accused Rajabhau Khandagale has been again taken into custody

and presently he is behind the bar. So far as another accused Sajid Baig is concerned, the allegations made against him was that he was in touch with the main accused for hiring the killers. This Court observed that no role is attributed against him in respect of conspiracy leading to death of the deceased.

9. Looking to both the aforesaid orders, the role of the applicant is uncomparable with them. They are released on bail for the reason that no substantive material is available against those accused persons. The applicant's role is to be adjudged on different footing, particularly, in light of the material available against him. In that view of the matter, the applicant is not entitled to claim parity. Apparently, the Trial Court has framed the programme for examination of the witnesses on day-to-day basis. If at this stage, the applicant is released on bail, further progress of the trial is likely to be hampered. In that view of the matter, no case is made out for grant of bail. Hence, the application is rejected.

10. The observations made here-in-above are prima facie in nature and are made for disposal of present bail application only.

(S. G. CHAPALGAONKAR, J.)

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