

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

BAIL APPLICATION NO.1411 OF 2023

Sanket Mahendra More
Age: 30 yrs, Occu: Nil
R/o: Plot No.177, Hanumanwadi,
Station Road, Chalisgaon,
District Jalgaon

... Applicant

Versus

The State of Maharashtra
Police Station Officer,
Chalisgaon Police Station,
Taluka Chalisgaon,
District Jalgaon.

... Respondent

...

Mr. S. S. Bora, Advocate for the Applicant
Mrs. P. V. Diggikar, APP for the Respondent/State

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 30.08.2023

PER COURT :

1. Heard the learned Advocate for the applicant and the learned APP for the respondent – State.
2. The applicant is seeking regular bail in connection with Crime No.24/2023 registered with Chalisgaon Police Station, District Jalgaon for the offences punishable under Sections 302, 323, 324, 504, 506, 143, 144, 147, 148, 149 of the Indian Penal Code and under Sections 37(1), 37(3) and Section 135 of the Maharashtra Police Act.

3. The investigation was set in motion on the information given by one Valmik Ramchandra Jadhav dated 16/01/2023. In nutshell, it is alleged that on 15/01/2023, the son of informant - Dinesh @ Bhavdu alongwith his friend Nikhil had been to Dattawadi at Pan stall. Thereafter, they came near dilapidated bungalow. Some persons arrived at near the bungalow at about 6:40 pm on their motorcycles and scooter. Aniket More and Mukesh @ Bhurya More interrogated with the deceased - Dinesh asking him as to why he remains in company of Sumit Bhosale. Thereafter, the accused – Sanket [applicant], Aniket and Mukesh, who were holding knife and chopper stabbed below the neck and chest of Dinesh. Other accused persons beaten him by wooden logs and iron rods. Resultantly, he received the fatal injuries and lost his life. On the basis of aforesaid report, Crime No.24/2023 came to be registered against in all seven accused persons named in the FIR and others five. The applicant has been arrested in pursuance of registration of the aforesaid offence on 31/03/2023. He was remanded to police custody. However, nothing incriminating articles is recovered from him. After due investigation, charge-sheet is filed, wherein, two eye witnesses, namely, Ashok Bhosale and Nikhil Rajput are shown.
4. Mr. Bora, learned Advocate appearing for the applicant invites attention of this Court to the contents of FIR so also the statements of alleged eye witnesses. He would submit that as per the statements of so called eye witnesses i.e. Ashok and Nikhil, one Mahendra @ Balu More and Ghrushneshwar Patil were also amongst the assailants. However, during the course of investigation, it was found that they were present at the spot.

Resultantly, they are not arraigned as accused in the charge-sheet. He would therefore submit that going by the contents of charge-sheet, even prosecution is not sure about the narration of incident given by the eye witnesses. He would further submit that during the course of investigation, nothing incriminating articles could be recovered from the applicant. There are no criminal antecedents. He would therefore urge that the applicant be released on bail.

5. Learned APP vehemently opposes the prayers. She would submit that the statements of eye witnesses clearly named the presence of the applicant at the spot. She would submit that there are allegations regarding participation of the applicant in actual assault. He was holding weapon in his hand. By inviting attention of this Court to the postmortem report, she would submit that, as many as four grievous injuries were seen on the person of the deceased which can attributed to the brutal assault by the accused persons. She would further submit that charge-sheet is filed for serious offence punishable under Section 302 read with Section 149 of IPC. Once, the presence of the applicant is seen along with other accused persons at the time of commission of offence, he is not entitled to seek the bail.
6. Having considered the submissions advanced, it is apparent that, FIR is lodged on the basis of hearsay information by father of the deceased. The FIR lodged by father of deceased is based on information given by Nikhil Rajput, but its contents are inconsistent with police statement of Nikhil. The entire case of prosecution is based on the statements of two eye witnesses i.e.

Ashok Bhosale and Nikhil Rajput. The careful reading of those statements would show that there is material inconsistency in the narration of the incident. Apparently, in both these statements, the role is attributed to Mahendra @ Balu More and Ghrushneshwar Patil in the main incident of assault. The police, after due investigation, concluded that those accused persons named in statement of eye witnesses were not present at the time of incident. Therefore, they are not added as accused in the charge-sheet. In that view of the matter, the story of prosecution does not inspire the confidence. The genesis of prosecution story is shaken. No recovery of incriminating article is secured from the applicant. The investigation is over and charge-sheet is also filed. In absence of the criminal antecedents, the case is made out for grant of bail subject to certain conditions. It is made clear that the observations here-in-above are on prima facie consideration. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, namely, Sanket Mahendra More be released on bail in connection with Crime No.24/2023 registered with Chalisgaon Police Station, District Jalgaon for the offences punishable under Sections 302, 323, 324, 504, 506, 143, 144, 147, 148, 149 of the Indian Penal Code and under Sections 37(1), 37(3) and Section 135 of the Maharashtra Police Act on furnishing P.B. and S.B. of Rs.50,000/- [Rs. Fifty Thousand Only] on the following conditions:

- a) The applicant shall not enter Chalisgaon town except for attending the Trial Court till conclusion of the trial.
- b) He shall furnish detailed address of his stay pending trial.
- c) He shall not tamper with the prosecution witnesses/ evidence in any manner.
- d) He shall attend the trial on the given dates.
- e) He shall not leave State of Maharashtra without permission of the Sessions Court.

(iii) Bail Application is disposed accordingly.

[S. G. CHAPALGAONKAR]
JUDGE

Sameer