

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

**BAIL APPLICATION NO.1512 OF 2023
WITH
CRIMINAL APPLICATION NO. 3640 OF 2023**

1. Shri. Buntty S/o Nitin Patil
Age: 22 years, Occu: Education
R/o: Kranti Nagar, Shirpur,
Tq. Shirpur, District Dhule
2. Shri Kohinoor @ Sameer Samad Pinjari
Age: 22 years, Occu: Education
R/o: Near Baba Aqua Water Center,
Shingave Shivar,
Tq. Shirpur, District Dhule

... Applicants

Versus

The State of Maharashtra

... Respondent

...

Mr. N. N. Desale, Advocate for the Applicants
Mr. K. S. Patil, APP for the Respondent/State
Mr. V. P. Raje, Advocate for the Informant

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 27.09.2023

PER COURT :

1. Heard Mr. Desale, the learned Advocate appearing for the applicant, Mr. Patil, learned APP for the respondent/State and Mr. Raje, learned Advocate appearing for the informant.
2. By this application, the applicants seek regular bail in connection with Crime No.40/2023 dated 05/02/2023 registered with Shirpur City Police Station, District Dhule, for the offences punishable under Sections 302, 143, 147, 148, 149, 120-B and 201 of the Indian Penal Code [for short 'IPC']

3. The investigation was set in motion on the basis of information given by one Raju Gulab Bhoi, who states that, he is in the business of fish market. On 04/02/2023, at about 6:00 pm, his son, namely, Rahul was at the shop. Thereafter, he went along with his friend, namely, Nitin Bhoi. After some time, Nitin informed him that, the Rahul has been stabbed by one Bhatya using a knife and he is lying in injured condition at Kranti Nagar. Thereafter, the informant rushed to the spot and took the injured son to the Hospital, where doctors declared him as dead. On further inquiry with the Nitin Bhoi, he narrated that, he saw Rahul was running in injured condition towards Bhadra Chowk, who was followed by the accused persons, including the present applicants.
4. It is therefore alleged that, on account of previous dispute, accused – Bhatya stabbed the deceased – Rahul so also other accused persons assaulted him using the weapons in their hands. In pursuance of the aforesaid information, Crime No.40/2023 came to be registered with Shirpur Police Station for the aforesaid offences. The applicants have been arrested in pursuance of the aforesaid crime. They are behind the bars since 05/02/2023. After completion of investigation, charge-sheet is filed against in all seven accused persons, including the present applicants.
5. Mr. Desale, learned Advocate appearing for the applicants would submit that the first information report is given by father of the deceased on the basis of hearsay information received to him from Nitin Bhoi. The initial part of the FIR stipulates that, the accused – Bhatya has inflicted the injury of knife on the person of Rahul. He would submit that names of other accused persons are added with general allegations without specific role. By inviting attention of

this Court towards post mortem report, Mr. Desale, learned Advocate would submit that the cause of death is a stab injury. The allegations in the FIR do not suggest any weapon in the hands of the applicants that can be used to stab the person. Also by inviting attention of this Court towards the statement of witness – Nitin, he submits that, only accused - Bhatya is alleged specific role in causing stab injury to the victim and the general allegations are made against others accused regarding assault on victim. He would further submit that the statement of Nitin is recorded on 13/02/2023 i.e. after nine days of the incident. The concoction of story cannot be ruled out. He would submit that the applicants are young aged persons having no criminal antecedents. They are behind the bars since 05/02/2023. The further detention of the applicants would not be necessary. Hence, he urges to release them on bail.

6. Mr. Patil, learned APP and Mr. Raje, learned Advocate appearing for the informant vehemently oppose the prayer for grant of bail. They would submit that there were multiple injuries on the person of the deceased. The first is the stab injury whereas multiple injuries were noted on the back of deceased along with abrasions over his forearm. They would submit that name of the applicants have been specifically mentioned in the FIR so also they are named by witness – Nitin. They were holding deadly weapons in their hands. They have actively participated in assault. Section 149 is invoked. Therefore, there is sufficient material to show complicity of the applicants in commission of offence. Hence, they urge to reject the application.
7. Having considered the submissions advanced, apparently, FIR has been lodged by the father of the deceased – Rahul on the basis of

information provided by the witness – Nitin. In first part of the FIR, there is allegation of stabbing by accused – Bhatya to the deceased – Rahul. In subsequent part of the FIR, there are general allegations against the other accused persons, including the present applicants that they were holding deadly weapons like Sword, Gupti etc. and they were running behind the deceased – Rahul, who was already injured because of assault by the accused – Bhatya.

8. The post mortem shows the cause of death as stab injury. The column no.17 of the postmortem report shows only one stab injury on the person of the deceased. The rest of the injuries are CLW and abrasions. The further elaboration regarding the incident appears in the statement of witness – Nitin. He alleges that, applicant on.1 was holding an iron rod in his hand. However, no specific role is attributed against the applicant no.2.
9. Apparently, the said statement is recorded after eight days on lodging the FIR. If Nitin had witnessed the incident as referred in the FIR, there was no impediment in recording his statement immediately after the incident. The delayed statement of Nitin giving the details of incident *prima facie* sufficient to accept the contention of the learned Advocate appearing for the applicant that the possibility of concoction cannot be ruled out. The applicants are arrested on 05/02/2023 and during the course of investigation, they were granted police custody. However, there is no recovery from them. No other incriminating material is made part of charge-sheet so as to attribute role against the applicants in commission of offence. Mr. Patil, learned APP confirms that there is no criminal antecedents. In that view of the matter, the case is made out for grant of bail to the applicants subject to certain conditions. Hence,

the following order:

ORDER

- (i)** Bail Application is allowed.
- (ii)** The applicants, namely, (1) Shri. Buntty S/o Nitin Patil (2) Shri Kohinoor @ Sameer Samad Pinjari be released on bail in connection with Crime No.40/2023, registered with Shirpur City Police Station, District Dhule, for the offences punishable under Sections 302, 143, 147, 148, 149, 120-B and 201 of IPC on furnishing P.B. and S.B. of Rs.50,000/- (Rs. Fifty Thousand Only) each on the following conditions:
 - (a)** The applicants shall not tamper with the prosecution evidence / witnesses in any manner.
 - (b)** They shall attend each and every effective date before the Trial Court.
 - (c)** They shall not enter in Taluka Shirpur, District Dhule for six months.
- (iii)** Bail Application is disposed of accordingly.

**[S. G. CHAPALGAONKAR]
JUDGE**

Sameer