

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

934 BAIL APPLICATION NO.1525 OF 2023

ANIL VITTHAL SHIRSATH
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. P P Dawalkar
APP for Respondent : Mr. K.S. Patil

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CORAM : S. G. CHAPALGAONKAR, J.
Dated: September 29, 2023

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PER COURT :-

1. The applicant seeks regular bail in connection with Crime No.144 of 2023 dated 5.4.2023 registered with Gangapur police station, District Aurangabad for the offences punishable under sections 302, 201, 376(2)(n), 394, 506, r/w 34 of the Indian Penal Code.

2. The investigation was set in motion on the basis of the statement of victim. In nutshell, she alleges that on 1.4.2023 accused arrived at her residential house. They hurled abuses to husband of the informant. Thereafter, they dragged him towards the well. It is alleged that the accused Rahul Aghade and Anil Shirsath (present applicant) had sticks in their hand. Accused Raybhan assaulted her husband by iron rod (pahar). The accused Rahul and Anil assaulted him by sticks. It is further alleged that accused persons pushed him in the well. Thereafter, on persuasion of the informant, they pulled him out of the well. She had arranged a vehicle to carry

the injured husband to the hospital. However, by the time vehicle arrived, her husband had lost his life. It is further alleged that because of the threats given by accused Raybhan, neither the incident was disclosed nor was reported to police by anyone. Last rites were performed on the body of the deceased. She alleges that after arrival of relatives, she is filing the complaint regarding the incident.

3. On the basis of information received, FIR has been registered against the accused persons for the aforesaid offences. Investigation progressed. Accused persons are arrested on 5.4.2023. Plea for grant of bail by the present applicant before the Sessions Court has been rejected vide order dated 19.7.2023. Hence, the present application.

4. Mr. Dawalkar, learned advocate appearing for the applicant would submit that first part of the FIR is pertains to allegations of rape against accused Raybhan. Second part of the FIR relates to the incident dated 1.4.2023. He would point out that the allegations against the applicant are that he was holding a stick in hand and dragged the husband of informant towards the well and assaulted him. Lastly, she alleges that accused persons pushed him in the well.

5. Mr. Dawalkar invites attention of this Court to the statements of daughters of the informant, wherein allegation against the applicant is that he beaten deceased by fist and kicks whereas accused no.1 Raybhan Thorat pushed deceased in the well. As such, there is glaring inconsistency regarding

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role attributed to the applicant in commission of the offence. He would submit that the deceased was not taken to the hospital though vehicle was called for. On next day, last rites are performed without reporting incident and two days later FIR has been filed, therefore, he urge that story narrated in the FIR is not believable.

6. Per contra, the learned APP opposes the prayer for grant of bail. He would submit that the incident took place in night hours. It is difficult to describe the role of individual accused persons. Minor contradictions appearing in the statement of the informant and witnesses can be ignored. Presence of the applicant at the spot can be gathered from the statements of the witnesses. The applicant has actively participated in commission of the offence. Hence, he urges to reject the prayer for grant of bail.

7. Having considered the submissions advanced, it can be gathered that alleged incident of assault on the deceased and consequential death took place on 1.4.2023 however it is reported to the police on 5.4.2023. Delay in lodging the FIR is not explained. Even, immediately after alleged assault on injured, vehicle was available for transportation. Witness Vitthalsingh Pardeshi confirms that he had reached his vehicle to transport the injured to the hospital. However, his statement suggests that husband of informant had already lost his life. Further, said witness states that he was informed that deceased sustained injuries because of fall on the steps and died. Perusal of the narration given in the FIR

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suggests that accused persons had pushed the victim in the well. However, statements of daughters of the informant restrict such allegation against accused Raybhan. Since, there is no postmortem report, cause of death is not known. There is nothing on record to corroborate the allegations regarding assault to the deceased. Even, taking the allegations as it is against the applicant, his role is limited. The statement of the other witnesses recorded under section 161 of the Cr.P.C. shows that they were informed by informant that victim suffered injuries because of fall on steps. Upon overall consideration of the material on record genesis of the prosecution story is shaken.

8. The applicant has been arrested in pursuance of the aforesaid offence on 5.4.2023. Investigation is complete. On the basis of the evidence available further detention of the applicant may not be necessary. Hence, case is made out for grant of bail. Hence, the order.

ORDER

- i. Criminal Bail Application is hereby allowed.
- ii. The applicant - ANIL VITTHAL SHIRSATH be released on bail in connection with Crime No.144 of 2023 dated 5.4.2023 registered with Gangapur police station, District Aurangabad for the offences punishable under sections 302, 201, 376(2)(n), 394, 506, r/w 34 of the Indian Penal Code on his furnishing P.B. & S.B. of Rs.50,000/- (Rs. Fifty Thousand) on the following conditions :-

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- a] The applicant shall not tamper the prosecution evidence.
 - b] The applicant shall attend each and every effective date before the trial court.
 - c] The applicant shall stay away from the village Sirasgaon for a period of six months from the date of this order.
- iii. Bail application is accordingly disposed off.

(S.G. CHAPALGAONKAR J.)

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