

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

937 BAIL APPLICATION NO.1587 OF 2023

GANESH BABAN THORAT
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. A.D. Ostwal
APP for Respondent: Mr. K.S. Patil

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CORAM : S. G. CHAPALGAONKAR, J.
Dated: September 13, 2023

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PER COURT :-

1. Leave to amend. Amendment be carried out forthwith.

2. The applicant seeks regular bail in connection with Crime No.343 of 2022 registered with Pundik Nagar police station, Tq. & District Aurangabad for the offences punishable under section 304(2) of the Indian Penal Code (subsequently converted into sections 302, 324, 323 of IPC so also with section 75 of Juvenile Justice Act, 2015.)

3. Investigation is set in motion on the basis of the information dated 27.8.2022 given by Pallavi Niraj Thorat, who states that she had developed love affair with the applicant. They had consensuous relationship as husband and wife. The applicant used to visit her home. Even she had traveled with him to Ooty and Bangalore. They had celebrated birthdays together. It is further alleged that the informant has a son namely Prem, aged 11 years. On 30.6.2022, her son

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came back from the school at about 12.30 hours. At the same time, the applicant came at her home. She alleges that when she had been to take hand wash, the applicant hit her son using a cable wire. He sustained injuries and become unconscious. Immediately, he was taken to the hospital by the applicant and herself. However, at the time of recording admission history at the hospital, the applicant recorded that the informant has hit on the person of the injured. She could not oppose at the relevant time since she was under mental pressure and the applicant persuaded her to conceal the truth since his service career was at stake. The applicant has been arrested in pursuance of the aforesaid crime on 28.8.2022. The plea of the applicant for grant of bail has been rejected by the learned Sessions Judge vide order dated 23.6.2023.

4. Mr. Ostawal, learned advocate appearing for the applicant would submit that MLC was recorded on the date of the incident when the deceased Prem had suffered the injuries. He would point out that the informant has taken her son to the hospital and she has recorded admission history at hospital that she is the author of the injuries suffered by her son. He would further point out that on many occasions the police personnel visited the hospital for recording statement of the injured. Every time, the informant had access to police; but there is no disclosure of facts alleged in the FIR. He would submit that after the injured lost his life and last rites were performed, FIR has been lodged with delay of about two months. He would submit that afterthought story has been

put-forth to falsely implicate the applicant. He, therefore urges for release of the applicant on bail.

5. Learned A.P.P. vehemently opposes the prayers. He would submit that the informant and the applicant had illicit relations. Son of the informant was hurdle in such relations. The applicant using the motorcycle clutch cable hit minor son of the informant and caused the injuries resulting into his death. He would further submit that during course of the investigation, there is recovery of the clothes at the instance of the applicant. Statement of various witnesses would confirm about illicit relationship between the informant and the applicant. There is strong motive on the part of the applicant to commit murder. Release of the applicant may hamper smooth prosecution. Hence, he urges to reject the application.

6. Having considered the submissions advanced, it is apparent that investigation in the matter is complete. Charge-sheet is filed. Earlier the FIR was registered for the offence punishable under section 304 (Part-II) of the IPC, however, at the time of the filing of the charge-sheet offences punishable u/s 302, 324, 323 of IPC r/w section 75 of the Juvenile Justice Act have been added. It can be gathered from the material in the charge-sheet that on 30.6.2022 injured Prem i.e. son of the informant was admitted to the hospital and informant herself has given admission history stating that she is the author of the injuries suffered by her son. Treatment was going on for almost two months. After son of the informant succumbed to the injuries, the FIR has been lodged. As rightly pointed out by

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Mr. Ostwal, learned counsel appearing for the applicant, during hospitalization of the deceased, police authorities were continuously visiting hospital and the informant has access to the police officers, however, she did not disclose the narration as made in the FIR. So far as the allegations regarding assault alleged to be made by the applicant on deceased, except bare version of the informant in the FIR, there is nothing to corroborate in the charge-sheet. No explanation is coming forth as to why the informant has not given her statement regarding assault at the hands of applicant for more than seven weeks of hospitalization. Possibility of developing a false story to implicate the applicant cannot be ruled out. However, it would be a matter of trial. The applicant is behind bar since 27.8.2022. His further detention may not be necessary. However, to protect the interest of the prosecution, certain conditions can be imposed. As such, case is made out for grant of bail. Hence, the order.

O R D E R

- I. Criminal Bail Application is hereby allowed.
- II. The applicant- GANESH BABAN THORAT be released on bail in connection with Crime No.343 of 2022 registered with Pundik Nagar police station, Tq. & District Aurangabad for the offences punishable under section 304(2), 302, 324, 323 of IPC and section 75 of Juvenile Justice Act, 2015 on furnishing P.B. & S.B. of Rs.50,000/- (Rs. Fifty Thousand) on the following conditions :-

- a] The applicant shall not tamper with the prosecution evidence.
- b] The applicant shall not contact with any of the witnesses named in the charge-sheet.
- c] The applicant shall update his address, mobile number with the police station so also submit the address, phone number and Aadhar card of his two close relatives.
- d] The applicant shall attend each and every effective date of hearing before the Sessions Court.

III. Bail application is accordingly disposed off.

(S.G. CHAPALGAONKAR J.)

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