

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1619 OF 2023

Nilesh Fulchand Kale

.... Applicant

Versus

The State of Maharashtra

.... Respondent

.....
Mr. N.S. Ghanekar, Advocate h/f Mr. D.S. Ingole, Advocate for
the Applicant

Mr. K.S. Patil, APP for Respondent-State

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[CORAM : S. G. CHAPALGAONKAR, J.]

DATE : 17th OCTOBER, 2023

ORDER :

1. The applicant seeks regular bail in connection with Crime No.0172 of 2022 registered with Belwandi Police Station, District Ahmednagar for the offences punishable under sections 302, 143, 147, 452, 323, 427 of the Indian Penal Code and section 135 of the Maharashtra Police Act.

2. Investigation was set in motion on the basis of information given by Vishal Kale, who alleges that, he had received telephone call from his mother. She narrated that the accused persons entered in Kharatwadi Shivar and abused to Uparlal (father of informant). It is specifically alleged that the applicant Nilesh throttled Uparlal, so also, gave fist blows on his chest. It is further alleged that the applicant gave kick blows to the mother of informant. The other accused persons named in the F.I.R. made assault by fists and kick blows to

Uparlal. Thereafter, accused persons scattered household articles and dispursed. It is further alleged that Uparlal was immediately shifted to Sassoon Hospital in the vehicle of Sanjay Pisal. However, on admission in the Hospital, he was declared dead. Post-mortem was conducted, and thereafter, the body was taken to their village.

3. On the basis of the aforesaid information, Crime No.0172 of 2022 was registered against in all 7 accused persons. The applicant has been arrested on 24.07.2022. The bail application moved by the applicant has been rejected by the order of Sessions Court, dated 01.09.2023.

4. Mr. Ghanekar, learned advocate appearing for the applicant submits that the incident took place on 08.05.2022, the F.I.R. has been registered on 11.05.2022. There is inordinate delay in registration of F.I.R. He would submit that the deceased was taken to the Sassoon Hospital. The Postmortem was conducted. Perusal of Postmortem report shows that the injuries are in the nature of contusion over the left scapular region and abrasions over the lower back. He would submit that none of the accused alleged use weapon in commission of offence. The cause of death is due to blunt injuries to head and chest. He would therefore submit that there was no intention to kill. He would further submit that the deceased was suffering from various ailments, which can be gathered from the evidence of the witness. Therefore, the death cannot be attributed to the alleged attack by the accused.

5. Learned APP strongly oppose the prayer for grant of bail. He would submit that all the accused persons entered in the field of the deceased and brutally attacked him and his wife. Thereafter, scattered the household articles. He would further submit that specific role is attributed against the applicant in commission of offence.

6. Having considered the submissions advanced, it is apparent that there is delay of three days in lodging F.I.R., and there was a dispute between the family of informant and accused persons over the agricultural land. On perusal of the allegations in the F.I.R. it can be observed that the applicant is alleged to have give fist blows over the chest of the deceased Uparlal, so also throttled him. Admittedly, no weapon is used in commission of offence. Injuries found on the person of the deceased as per report of post-mortem show that it is in the nature of contusion and abrasion. There was no intention to kill. The statement of Sajnay Pisal, who was the driver of the vehicle and took the deceased to the Hospital states that the deceased was suffering from the various ailments and the service of his vehicle was made available for his transportation on many occasions. Even he states that when he was called by Rutik informing that urine tube fixed on uterus has been dislocated, and therefore, the victim was to be shifted to the Hospital.

7. Pertinently, some of the of the accused persons are released on bail. Accused Minas Kale is granted bail vide Bail Application No.1400 of 2022, after noting that there was no intention to kill on the part of the accused. The applicant is

behind the bars from 23.07.2023. The investigation in the matter is complete. Further detention of the applicant may not be necessary. In that view of the matter, case is made out for grant of bail. Hence, the order.

O R D E R

- (i) Bail Application is hereby allowed.
- (ii) The applicant – NILESH FULCHAND KALE be released on bail in connection with Crime No.0172 of 2022 registered with Belwandi Police Station, District Ahmednagar for the offences punishable under sections 302, 143, 147, 452, 323, 427 of the Indian Penal Code and section 135 of the Maharashtra Police Act on his furnishing P.B. & S.B. of Rs.50,000/- (Rupees Fifty Thousand), on the following conditions :-
 - [a] The applicant shall not tamper the prosecution evidence.
 - [b] The applicant shall not enter village Wagharkhelwadi, Taluka Shrigonda, District Ahmednagar till conclusion of Trial.
- (iii) Bail application is accordingly disposed of.

[S. G. CHAPALGAONKAR]
JUDGE

S.P. Rane