

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

BAIL APPLICATION NO. 1630 OF 2023

1. Salman s/o Rais Shaikh
Age: 30 years, Occu: Business
2. Sohel @ Idris s/o Rais Shaikh
Age: 25 years, Occu: Business,
Both R/o: Lane No.9, Dada Colony,
Kailas Nagar, Aurangabad

... Applicants

Versus

1. The State of Maharashtra

... Respondent

...
Mr. A. K. Bhosle, Advocate for the Applicant
Mr. K. S. Patil, APP for the Respondent/State
...

CORAM : S. G. CHAPALGAONKAR, J.

Reserved On : 12.10.2023

Pronounced On : 16.10.2023

PER COURT :

1. Heard the learned Advocate for the applicants and learned APP for the respondent/State.
2. By this application, the applicants seek regular bail in connection with Crime No.99/2023 dated 05/04/2023, registered with Jinsi Police Station, Aurangabad, for the offences punishable under Sections 143, 147, 148, 149, 307, 323, 302 of the Indian Penal Code [for short 'IPC'].

3. The investigation was set in motion on the information given by Yasmin Begum w/o Munir Khan. She states that, on 27/03/2023, at about 7.30 p.m., her husband had left the home. After some time, her brother-in-law received a telephonic message from one Shamida Shaikh that accused persons, namely, Sultana Madem, Javed @ Dada, Salman, Sohail, Shaikh Taher Hussain are beating her husband Munir Khan. Her brother-in-law reached on the spot. After some time, he informed that, Munir Khan has suffered injuries and he has been taken to Government Hospital at Aurangabad. The informant further states that, her brother-in-law told that her husband Munir and Shamida had a quarrel. At that time, the accused persons, who are residents of same lane, intervened and assaulted her husband using the hockey sticks, fists and kick blows. As such, he sustained injuries.
4. On the basis of aforesaid information, initially, offence punishable under Sections 307, 323, 143, 147, 148 and 149 of IPC was registered against in all 5 accused persons, including the applicants. Subsequently, husband of the informant succumbed to the injuries. Hence, graver offence under Section 302 of IPC came to be added.
5. In pursuance of the aforesaid crime, the applicants have been arrested on 24/06/2023 and 25/06/2023 respectively. The

investigation progressed. The charge-sheet came to be filed. The applicants moved their bail application before the Sessions Court at Aurangabad, which came to be rejected vide order dated 02/09/2023. Hence, the present application.

6. Mr. Bhosle, learned Advocate appearing for the applicants would submit that, there is an inordinate delay in lodging the FIR. He would point out that, the alleged incident occurred on 27/03/2023, whereas, on the information given by Yasmin Begum i.e. wife of the deceased, the FIR came to be registered on 05/04/2023. There is no explanation for inordinate delay. In such circumstances, the possibility of false implication of the applicants cannot be ruled out. He would further point out that, the FIR is based on hear-say information. Although the charge-sheet shows the statements of so called eye witnesses, the allegations are inconsistent so far as the role of the assailants. No motive is alleged against the applicants. He would submit that, because of financial dispute, the applicants have been falsely implicated in the crime.

Mr. Bhosle, learned Advocate invites attention of this Court towards the post-mortem report as well as the opinion as to the cause of death and contends that, the death is caused because of blunt trauma of abdomen and the complications. There was no injury on the vital part of the deceased. He would submit that, this Court has already

released one of the accused, namely, Shaikh Abutaher Shaikh Hussain on regular bail in Bail Application No.1570/2023. Hence, he urges to release the applicant on bail.

7. Learned APP strongly opposes the application. He would submit that, the name of the applicants are specifically mentioned in the FIR. Even the eye witnesses have named the applicants to be assailants of the deceased. A memorandum under Section 27 of the Indian Evidence Act, 1872 [for short 'the Act'] at the instance of the applicant no.1- Salman shows that he had shown the spot where the iron pipe used for assault to the deceased was thrown. Similarly, the learned APP further submits that, the cause of death is *"Septecemia in an operated case of exploratory lapratomy with primary closure of ileal perforation due to blunt trauma adomen"*. He would therefore submit that, there is sufficient material to bring home guilt against the applicants. Hence, he urges to reject their application.

8. Having considered the submissions advanced, it can be gathered that, although the incident is dated 27/03/2023, the FIR has been lodged on 05/04/2023 with delay of eighth days, for which, there is no explanation. The statement of witness - Shaikh Harun, a Police Sub-Inspector, attached to Jinsi Police Station, depicts that deceased - Munir and his brother, namely,

Feroz Khan had been to police station, they disclosed that, the accused – Shaikh Salman assaulted Munir by an iron pipe and accused – Idris assaulted by hockey sticks, whereas, accused – Javid assaulted him by wooden log. However, such information is not recorded on the same day. The Feroz Khan, who claims to be an eye witness, states that, the accused – Sohail Khan was beating Shaikh Munir by fist and kick blows. The accused – Salman was beating him by an iron pipe and accused – Taher was beating by hockey sticks. A similar statement of Abdul Gafoor is also recorded.

9. The close scrutiny of the aforesaid statement shows that there is material contradiction in respect of role attributed against each of the accused. Apart from the delay in lodging the FIR, the statements of so called eye witnesses appear to have been recorded after inordinate delay. The statement of star eye witness as shown in the charge-sheet is recorded on 13/04/2023 and 23/04/2023, wherein, there is contradiction on material aspects. Although the recovery under Section 27 of the Act is attempted on the basis of so called memorandum, no recovery could be made at the instance of applicant no.1 – Salman. There is no recovery from applicant no.2 – Sohail. The cause of death appears to be multiple injuries and subsequent complications. In that view of the matter, the case is made out for grant of bail. Hence, following order:

ORDER

- (I)** Bail Application is allowed.
- (ii)** The applicants, namely, (1) Salman s/o Rais Shaikh and (2) Sohail @ Idris s/o Rais Shaikh be released on bail in connection with Crime No.99/2023 dated 05/04/2023, registered with Jinsi Police Station, Aurangabad, for the offences punishable under Sections 143, 147, 148, 149, 307, 323, 302 of IPC on furnishing P.B. and S.B. of Rs.50,000/- (Rs. Fifty Thousand) each, on the following conditions:
- (a)** The applicants shall not tamper with the prosecution evidence.
 - (b)** They shall not establish contact with any person acquainted with the crime.
 - (c)** They shall visit the concerned Police Station on 15th of every month, between 10:00 a.m. and 2:00 p.m. till conclusion of the trial.
 - (d)** It is made clear that the observations made herein above are on prima consideration of the material on record and only for the purpose of deciding this application.
- (iii)** Bail Application is disposed of accordingly.

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