

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

BAIL APPLICATION NO.1656 OF 2023

RITIK KAILASH @ KALYANKAR WADHAVE ... **Applicant**

VERSUS

THE STATE OF MAHARASHTRA ... **Respondent**

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Mr. Rathi Swapnil S., Advocate for Applicant

Mrs. P. V. Diggikar, APP for Respondent/State

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CORAM : S. G. CHAPALGAONKAR, J.

DATE : 12.10.2023

PER COURT :

1. Heard the learned Advocate appearing for the applicant and learned APP for the respondent/State.
2. By this application, the applicant seeks regular bail in connection with Crime No.44/2023 registered with Basamba Police Station, District Hingoli for the offences punishable under Sections 302 and 109 read with Section 34 of the Indian Penal Code [for short 'IPC'].

3. The investigation was set in motion on the basis of information given by Gajanan Shamrao Gunjkar, who alleges that, his brother – Suresh Gunjkar was married with one Kavita. He was residing separately along with his wife and daughter. He was in the habit of drinking liquor. He had always quarrel with his wife – Kavita. The Kavita had lodged a report regarding such quarrels to the police. It is further alleged that, one Sumit @ Chintya Pundage used to intervene in their quarrels. His brother was not liking such intervention. It is further alleged that on 15/02/2023, he received an information from his cousin – Sanjay Gunjkar that, his brother – Suresh is killed by someone else and his dead body is lying in the field of Shaikh Abdul Wahid. In pursuance of the said report, Crime No.44/2023 came to be registered with police station Basambba, Taluka Hingoli against the wife of deceased – Kavita and Sumit @ Chintya Pundage.
4. The investigation progressed pursuant to the report. The statements of the accused persons were recorded, who allegedly inform that, they have murdered the deceased with the help of applicant. Accordingly, the applicant has been arrested on 17/02/2023. Since then, he is behind the bars. His plea for grant of bail has been rejected by the Sessions Court vide order dated 24/08/2023. Hence, the present application.
5. Mr. Rathi, learned Advocate appearing for the applicant

would submit that the case of the prosecution is based on circumstantial evidence and the applicant has been falsely implicated in the crime on the basis of alleged statements given by co-accused persons. He would point out that, there is no motive alleged against the applicant in commission of murder. He submits that, in fact, as per FIR, motive is alleged against the wife of deceased and her friend – Sumit @ Chintya. Both the accused persons are already enlarged on bail by the order of the Sessions Court. He would submit that the learned Sessions Judge refused to exercise discretion in favour of the applicant for the reason that there is recovery of the weapon from the applicant, however, that itself cannot be considered as incriminating circumstances to implicate the applicant.

6. Learned APP opposes the application. She would submit that apart from the discovery under Section 27 of the Evidence Act, 1872 [for short 'the Act'], the blood stained of cloths have been seized from the applicant. She would therefore submit that the evidence on record strongly pinpoints the involvement of the applicant in the commission of offence. As such, she urges to reject the prayer for grant of bail.
7. Having considered the submissions advanced, apparently, the FIR nowhere attributes the connection of the applicant with either deceased, his wife – Kavita or the co-accused. The role of the applicant is sought

to be introduced on the basis so called statements given by the co-accused during the police custody. Such statements would not be admissible in evidence. The accused nos.1 and 3 are already enlarged on bail. Pertinently, the seizure panchnama under Section 165 of the Code of Criminal Procedure in respect of co-accused – Sumit @ Chintya shows that the shirt with blood stains was seized from his house. The similar evidence is sought to be relied against the applicant in the form of the discovery panchnama under Section 27 of the Act. However, the chemical analysis report is still awaited and there is no confirmation as regard human blood on the clothes or particularly, blood of the deceased. Although there is recovery of the weapon under Section 27 of the Act from the applicant, it was not blood stained. It is a general weapon used by the agriculturist. In that view of the matter and particularly, the fact that, no motive is attributed against the applicant in commission of murder and co-accused persons are already enlarged on bail, the applicant deserves to be treated in the same manner by invoking principles of parity. Therefore, the case is made out for grant of bail. Hence, the following order:

ORDER

- (i)** Bail Application is allowed.
- (ii)** The applicant, namely, RITIK KAILASH @ KALYANKAR WADHAVE be released on bail in connection with Crime No.44/2023 registered with Basamba Police Station, District Hingoli for the

offences punishable under Sections 302 and 109 read with Section 34 IPC on furnishing P.B. and S.B. of Rs. 50,000/- [Rupees Fifty Thousand Only] on the following conditions:

- (a)** The applicant shall not tamper with the prosecution evidence / witnesses in any manner.
 - (b)** He shall attend each and every effective dates of hearing before the Sessions Court.
 - (c)** He shall not indulge in similar offence.
- (iii)** Bail Application is disposed of accordingly.

[S. G. CHAPALGAONKAR]
JUDGE

Sameer