

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

BAIL APPLICATION NO.1693 OF 2023

SURYAKANT KASHINATH GATALE

... Applicant

VERSUS

THE STATE OF MAHARASHTRA

... Respondent

...

Mr. V. D. Gunale., Advocate for Applicant

Mr. K. S. Patil, 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.245/2021 registered with Udgir Rural Police Station, Tq. Udgir, Dist. Latur for the offences punishable under 302 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 Dadarao Bhimrao Kendre, alleging that, his son – Hanmant had married to one Mangalabai, who had extra-marital relations with Kashinath Suryakant Gatate. It is further alleged that, on 01/07/2021, at about 5:00 pm, his son-in-law – Ganpat Munde received a telephonic information from his friend – Govind Munde that, the accused persons are beating Hanmant at Shahu Chowk, Udgir. He further states that, because of heavy rains, he did not move to the said place. However, on the next date i.e. 02/07/2021, he had been to Udgir to see his son and found him dead at hospital and post-mortem was also conducted. Accordingly, he alleges that, the accused persons are responsible for death of Hanmant. The investigation progressed in pursuance of the aforesaid report. The accused persons are arrested. The statements of witnesses – Ganpt Munde, Govind Munde and others have been recorded. After completion of investigation, charge-sheet has been filed. The applicant moved before the Sessions Court for grant of bail. However, his application came to be rejected vide order dated 26/07/2023.

4. Mr. Gunale, learned Advocate appearing for the applicant would submit that the applicant has been falsely implicated in the crime. There is no material against him, by which, he can be connected with the alleged offence. He would submit that, a fictitious story regarding the assault by the accused persons has

been carved out. The FIR is belated. The first informant has lodged the report based on hearsay information. The statement of so called eye witnesses do not inspire confidence. The investigation is completed. The applicant is behind the bars for more than six months. Hence, he urges to release the applicant on bail.

5. Learned APP strongly opposes the prayer for grant of bail. He would submit that, the statement of Govind Munde would clearly show that he saw the accused persons were beating the deceased and accordingly, he had informed to Ganpat Munde i.e. son-in-law of the informant. He would further submit that the statement of the son of the victim i.e. Bhimrao Kendre is recorded, who states that, his mother was in the company of the accused – Kashinath. Further, there is a statement of witness – Prakash, who has seen the accused persons carrying the deceased in a Rickshaw. On the basis of aforesaid evidence, learned APP urges that there is sufficient material to bring home complicity of the applicant in commission of offence. He urges to reject the application.
6. Having considered the submissions advanced, it is apparent that, the FIR itself is based on hearsay information. The first informant is a father of the victim. He states that, he had received information from his son-in-law that the accused persons were

assaulting to the deceased. However, because of heavy rains, he did not move to see his son. The version in the FIR itself appears to be fallacious. If there was direct information to the informant that the accused persons were assaulting the deceased, there is no reason as to why he did not immediately rush to the place. The statement of the witness – Ganpat, who is son-in-law of the informant and co-brother of the Hanmant, states that he had received a telephone message from his friend – Govind that the accused persons were assaulting the deceased – Hanmant. However, even he do not think it fit to see him. The perusal of the statement of witness – Pralhad Kendre suggests that, the accused – Kashinath and Suryakant were quarreling with the Hanmant and they took him in an auto rickshaw. All these evidence simply suggest that, the accused persons were last seen together with the deceased. However, the conduct of the witnesses, prima facie, do not inspire confidence. The genesis of prosecution case is shaken. The post mortem report would indicate that the death of Hanmant is on account of asphyxia due to neck compression. There is no evidence to suggest that the applicant is responsible for the death of deceased. In that view of the matter, the case is made out for grant of bail. Hence, the following order:

ORDER

- (i)** Bail Application is allowed.
- (ii)** The applicant, namely, SURYAKANT KASHINATH

GATALE be released on bail in connection with Crime No.245/2021 registered with Udgir Rural Police Station, Tq. Udgir, Dist. Latur for the offences punishable under 302 read with Section 34 of 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