

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

BAIL APPLICATION NO. 1695 OF 2023

1. Balwansingh S/o Sultansingh Tak
Age: 26 years, Occu: Labour,
R/o: Manwat,
Tq. Manwat, Dist. Parbhani

... Applicant

Versus

1. The State of Maharashtra
Through Investigation Officer,
Manwat Police Station,
Tq. Manwant, Dist Parbhani

... Respondent

...

Mr. R. V. Gore, Advocate for the Applicant
Mr. S. B. Narwade, APP for the Respondent/State

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 16.10.2023

FINAL ORDER :

1. Heard the learned Advocate for the applicant and learned APP for the respondent/State.
2. By this application, the applicant seeks regular bail in connection with Crime No.342/2022 dated 08/11/2022, registered with Manwat Police Station, Tq. Manwat, Dist. Parbhani for the offences punishable under Sections 302, 326, 143, 144, 148, 149 and 506 of the Indian Penal Code [for short 'IPC'] and Section 4 and 25 of the Arms Act, 1959 [for short 'the Act'].

3. The investigation was set in motion on the basis of the information given by one Tejadsingh Joharsingh Bavri, stating that on 07/11/2022, around 8.30 p.m. while he was at "Hotel Aai" and having a tea with Balrajsingh, Pavansingh and Deepsingh, his companion Balramsingh received a phone call from his father that the accused persons are searching for him. After some time, the accused persons arrived at the spot. They were holding deadly weapons like sword, sticks etc., accused Surjitsingh and Arjunsingh assaulted Balramsingh with sword. When Balramsingh tried to run away from the spot, both the accused persons chased him and again assaulted him. Injured Balramsingh succumbed to the injuries. Name of all the persons who were accompanied with the assailants are incorporated in the FIR which includes the name of the applicant. Omnibus statement is made in the FIR that all the accused were holding weapons in their hands. The applicant has been arrested in pursuance of the aforesaid offence on 08/11/2022. Since then, he is behind bars. The investigation progressed. During the course of investigation, the weapon of offence i.e. sword is recovered from the main assailant named as above. There is no discovery at the instance of the applicant. On completion of investigation, charge-sheet is filed. Trial is yet to commence.

4. Mr. Gore, learned Advocate appearing for the applicant submits that, this Court has already granted bail to the three accused persons named in the FIR vide Bail Application No.1213/2023 and two accused persons in Bail Application No.787/2023. Similarly, accused – Lalkarsingh Poonamsingh Junni is granted bail in Bail Application No.1448/2023. He would therefore submit that although the applicant is named in the FIR, no specific role is attributed against him. As such, the applicant deserves to be released on bail by invoking the principle of parity. He would further submit that, during the course of investigation, the statement of alleged eye witnesses are recorded. Referring to the statement of Tejadsingh Bavri, he would point out that, the allegations of actual assault are attributed only against accused – Surjitsingh and Arjunsingh. He further submit that in the statements of witnesses, namely, Deepsingh and Ravisingh, the name of the applicant is incorporated along with the assailants without any specifications about his role. He would submit that there is no recovery of weapon from the applicant. He would further submit that, although the statements of witnesses are recorded under Section 164 of the Code of Criminal Procedure [for short 'Cr.PC'], the statement of witness – Ravisingh is omnibus so far as the role of the applicant, so also the statement of Deepsingh is

inconsistent with his statement under Section 161 of Cr.PC. He would therefore submit that the possibility of false implications of the applicant cannot be ruled out. The applicant is behind the bars since 08/11/2022. The trial would take its own course. Further detention of the applicant would not be necessary. Hence, he urges to grant the bail.

5. Learned APP strongly opposes the prayer on the ground that, it is a case of an unlawful assembly culminated into the cause of murder. He would submit that the applicant is named in the FIR so also in the statement of the witnesses. He was seen holding deadly weapon like sword in his hand. Learned APP invites attention of this Court towards the statement of eye witnesses, namely, Deepsingh Bavri and Ravisingh Tak to contend that both eye witnesses have specifically named the applicant to be an assailant against the deceased. He would therefore submit that what role is played by each of the accused need not be explained by the witnesses, once the evidence depicts that, the applicant was a member of an unlawful assembly and Section 149 of IPC is invoked, the individual role of each of the applicant need not be scrutinized. Learned APP would further submit that the accused persons, who are released on bail by the orders

of this Court, were not attributed any role in actual assault to the deceased. The case of the applicant is distinguishable from the accused who are released on bail. He would further submit that the statements of the witnesses recorded under Section 164(5) of Cr.PC also names the applicant to be one of the assailants. Therefore, he urges to reject the application.

6. Having considered the submissions advanced and the perusal of the material in charge-sheet would depict that the FIR names as many as eleven accused persons. The informant specifically states that accused – Surjitsingh Tak and Arjunsingh Tak assaulted deceased Balramsingh by a sword. Thereafter, he ran towards Nala. The accused – Surjitsingh Tak and Arjunsingh followed him. However, the deceased fell into a ditch near a bus-stop. Thereafter, apprehending attack by other accused persons, the informant ran away. After some time, they returned near the spot of the incident, they noticed that, Balramsingh was seriously injured and he was unconscious.
7. The 164 statement of Tejadsingh Bavri states that, Surjitsingh and Arjunsingh have assaulted the Balramsingh on his head using a sword. A similar statement is recorded by witness – Pavansingh Bavri. Pertinently, both these

witnesses have given the narration of the assault while Balram Singh was at the Nala. In the statement of Deep Singh Bavri along with accused Surjitsingh and Arjunsingh, the applicant is also named as assailant. The witness - Ravisingh states about the assault on Balram Singh by accused Surjitsingh and Arjunsingh at the Nala, however, in last para, he refers to the name of the applicant along with accused - Surjitsingh and Arjunsingh.

8. The minute reading of the aforesaid evidence shows that, applicant's role in actual assault is a improvised version of the incident. Out of four eye witnesses, two witnesses are not naming the applicant to be an assailant. Even the first informant do not name him to be an assailant. The witness - Ravisingh in actual narration of incident do not describe the role of the applicant being the assailant. Only the statement of Deep Singh refers the applicant to be assailant along with accused - Surjitsingh and Arjunsingh. The perusal of the statements recorded under Section 164 appears to be further improvisation.
9. The perusal of the medical evidence would show that there were four injuries on the person of the deceased. If there were more than four assailants and the deceased was attacked twice, some more injuries ought to have been

detected on the the deceased. Therefore, the contention that the role of the applicant is an improvised version of the prosecution case, cannot be ruled. The applicant is behind the bars since 08/11/2022. The trial is likely to take some more time. In that view of the matter, further detention of the applicant is not necessary and the case is made out for grant of bail. Hence, following order:

ORDER

- (I)** Bail Application is allowed.
- (ii)** The applicants, namely, Balwansingh S/o Sultansingh Tak, be released on bail, in connection with Crime No.342/2022 dated 08/11/2022, registered with Manwat Police Station, Tq. Manwat, Dist. Parbhani for the offences punishable under Sections 302, 326, 143, 144, 148, 149 and 506 of IPC and Section 4 and 25 of the Act on furnishing P.B. and S.B. of Rs.50,000/- (Rs. Fifty Thousand), on the following conditions:
 - (a)** The applicant shall not tamper with the prosecution witnesses.
 - (b)** He shall attend the trial on each and every effective date.
 - (c)** He shall not enter Manwat Town till disposal of the Sessions Trial in the present case, except for attending police station as described hereunder.
 - (d)** He shall visit Manwat Police Station, Dist. Parbhani, once on 17th of every Month between 10.00 a.m. and 2.00 p.m., till conclusion of trial.

- (e)** He shall update about his address and contact number with the concerned police station.
- (iii)** It is made clear that the observations made herein above are on prima facie consideration of the material in charge-sheet and only for disposal of this application.
- (iv)** Bail Application is disposed of accordingly.

[S. G. CHAPALGAONKAR]
JUDGE

Sameer