

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1925 OF 2023

Dnyaneshwar Baban Aglave,
Age 47 years, Occu. Agriculturist,
R/o. Raghunathpurwadi, Shivoor,
Taluka Vaijapur, District Aurangabad .. Applicant

Versus

The State of Maharashtra
Through Shivoor Police Station,
Tq. Vaijapur, Dist. Aurangabad .. Respondent

Mr. V. D. Sapkal, Senior Advocate instructed by Mr. Sandip R.
Sapkal, Advocate for Applicant;
Mr. P. G. Borade, APP for Respondent/State

CORAM : S. G. MEHARE, J.

DATE : 07-11-2023

PER COURT :-

1. Heard the learned Senior Counsel for the applicant and the learned A.P.P. for the respondent/State.
2. This is a successive application for bail.
3. The applicant seeks bail in C.R.No.344 of 2023 registered with Shivoor Police Station, Taluka Vaijapur, District Aurangabad, for the offences punishable under Sections 498A, 323 and 504 read with Section 34 of the Indian Penal Code.
4. As per the practice, after hearing the respective counsels, when the Court express disinclination to grant bail, the counsel for

the accused makes a statement that on instructions he wanted to withdraw the application. In such a situation, the Court does not pass a detailed order, but that does not mean that the Court did not consider the material available on record. Even then, the learned Senior Counsel wanted to re-argue the case.

5. The learned Senior Counsel for the applicant submits that the material collected by the prosecution was insufficient to arraign the applicant as accused. The sole evidence against him is a call detail record. There are no resistance marks. The septic tank had no iron cage. It has also been argued that the spot panchnama reveals that the septic tank was to the back side of the house of the deceased and, thereafter there is one warehouse. The three sides of the house were surrounded by the residential houses and on one side there is main road. Therefore, it cannot be said that it was isolated place.

6. He has also argued that the material improvements were made when the police reached there, particularly about placing iron cage on the septic tank where the deceased was drowned. He also submitted that the statement of the accused cannot be used against him. Bare telephonic contact data is not sufficient to link the accused with the alleged incident. There was no direct evidence against the accused. The witnesses are hearsay. The prime witness relied upon the prosecution does not disclose that

the applicant had direct connection with the crime. In sum and substance, at one hand, he is arguing that some evidence was created subsequent to the report and the prosecution cannot use his own statement against him. He referred to the postmortem report and argued that there were no resistance marks nor the signs of throttling. She had a very small injury on the right ear. Hence, the applicant deserves bail.

7. The learned A.P.P. would submit that this Court has considered the entire material while considering the earlier bail application. There is no change in circumstances. Hence, the applicant is not entitled to bail.

8. Before advertng to the case on merit, the Court clarified that the entire material was considered while dealing with earlier bail application.

9. It seems from the arguments of the learned Senior Counsel for the applicant that he wanted to take advantage of what was not available on record as per the statement of the accused. The statement of the accused was reduced to writing in which he disclosed that he had illicit relationship with the deceased. She was harassing him for money. Hence, he went to her house when she was alone and slapped her. Then, he lifted her and threw in the septic tank.

10. It is correct that the statement of the accused may not be used against him but where the corroborative evidence is recovered by the prosecution, that may certainly be used to show the link of the accused with crime. The report of call detail record shows that the applicant and the deceased were in contact. Soon before the incident also, the applicant called the deceased.

11. It also appear from the arguments of the learned Senior Counsel on the point that it was not a case of homicide. The fact remains that the septic tank was on the backside of the house and she had no reason to carry a water pot and go to the backside with the note books and other things. The spot panchnama reveals that one pot was floating on the water. One mobile handset and four note books of Bachat Gat were discovered from the septic tank. In a natural course, when a person wanted to go outside, he has no reason to go to the septic tank, that too which was on the back side.

12. The learned Senior Counsel did not point out a change in circumstance to claim the successive bail. There was no change in circumstance. Hence, the application stands dismissed.

(S. G. MEHARE)
JUDGE

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