

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.1926 OF 2023**

MAYUR VIJAY KALE
VERSUS
THE STATE OF MAHARASHTRA

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Mr. Shaikh Mazhar A. Jahagirdar, Advocate for the Applicant.
Mr. S. P. Deshmukh, APP for Respondents-State.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 03rd NOVEMBER, 2023.**

PER COURT:-

1. The applicant seeks regular bail in connection with Crime No.356 of 2023 registered with Rahata Police Station, District Ahmednagar for the offences punishable under sections 302, 397 of the Indian Penal Code.

2. The investigation was set in motion on the basis of the information given by one Navnath Dadasaheb Choudhari dated 08.07.2023, wherein he alleges that his neighbour Sunil Nerkar informed him that his nephew Sudhir Kande is laying near Puntamba-Shrirampur road in injured condition. When he rushed to the spot, he found that Sudhir had suffered stab injury on left side of chest, the blood was oozed and there was no response of respiration. Accordingly, he lodged report to the police station. On the basis of the aforesaid report, Crime No.356/2023 came to be registered against the unknown accused persons for offence punishable under Section 302 of the Indian Penal Code. The investigation progressed. The applicant has been arrested in pursuance of the aforesaid crime on 10.07.2023. Since then, he is behind the bar. His prayer for grant of bail has been rejected by the Sessions Court vide its order dated 16.10.2023.

3. Mr. Jahagirdar, learned Advocate appearing for the applicant would submit that the applicant has been falsely implicated in the aforesaid crime. The investigation progressed. The charge-sheet has been filed. Perusal of the charge-sheet do not show any admissible evidence to bring home complicity of the applicant in commission of the offence. He would invite attention of this Court to the supplementary statement of first informant and statement of some other witnesses, which suggest that applicant found in possession of mobile phone of the deceased. Although, recovery of the knife is shown from the applicant, it does not indicate blood stains. Even, seizure of the clothes is of no consequence in absence of blood stains. He would, therefore, urge that on the basis of the evidence tendered in the charge-sheet, no case can be made out against the applicant, hence, his further detention may not be permitted.

4. The learned APP strongly opposes the prayer for grant of bail. He would submit that the statement of the witnesses and the recovery of the incriminating article is sufficient to *prima facie* bring home guilt against the applicant.

5. Having considered submissions advance, it can be gathered that the case of the prosecution is based on circumstantial evidence. It is trite that, in such case the prosecution has to bring on record the complete chain of circumstances, which clinchingly points out guilt against the applicant. Any missing link in such circumstantial evidence would benefit the accused. On perusal of the material in the charge-sheet, the first circumstance that prosecution relies is mobile instrument that has been recovered from one Sandeep Sudake. The statement of Sandeep Sudake shows that he had

purchased the same from one Rushikesh Jadhav. The statement of Rushikesh Jadhav shows that he had purchased mobile instrument from the applicant alongwith co-accused. However, as rightly pointed out by the learned Advocate appearing for the applicant, there is nothing on record to indicate that the mobile phone that has been recovered belongs to the deceased. Pertinently, applicant was arrested on 10.07.2023 before recording statement of witnesses on 14.07.2023, which suggest that mobile instrument of deceased was possessed by the applicant. Record is silent as to what was the basis for arrest of the applicant, when subsequent statements are relied to bring complicity of applicant in commission of crime.

6. So far as the other circumstance relied upon by the prosecution is recovery of knife, however, no blood stains were found on the same. Even, recovery of the clothes do not indicate that any incriminating material like blood stains was found on the clothes. The CDR and SDR record that could have been made available in the charge-sheet to show the presence of the applicant at the spot of the incident at the relevant time, however, no such evidence is made part of the charge-sheet. Taking overall survey of the material brought on record, it can be gathered that the prosecution evidence is bereft to make out any offence against the applicant. The investigation in the matter is complete. The charge-sheet is filed. The learned APP confirms that there are no criminal antecedents to discredit the applicant. In that view of the matter, case is made out for grant of bail. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Mayur Vijay Kale be released on bail in

Crime No.356 of 2023 registered with Rahata Police Station, District Ahmednagar for the offences punishable under sections 302, 397 of the Indian Penal Code on furnishing P.B. and S.B. of Rs.50,000/- (Rs.Fifty Thousand only) each on following condition:

- a. The applicant shall not tamper with the prosecution evidence in any manner.
 - b. The applicant shall attend each and every effective date before the Trial Court.
 - c. The applicant shall furnish details of his residential address and mobile number with the concerned police station and update the same as and when required.
- (iii) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE