

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

BAIL APPLICATION NO.1933 OF 2023

ANKUSH KISAN GAWALI
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. A.K. Bhosle
APP for Respondent : Mr. K.S. Patil

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CORAM : S. G. CHAPALGAONKAR, J.

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Reserved on : November 06, 2023
Pronounced on : November 10, 2023

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ORDER :-

1. The applicant seeks regular bail in connection with Crime No.411 of 2021 (Sessions Case No.77 of 2022) registered with Dharangaon police station, District Jalgaon for the offences punishable under sections 302, 393, 396, 120-B of the Indian Penal Code.

2. Investigation was set in motion on the basis of the information given by one Dilip Raju Choudhary. He alleges that on 26.12.2021 he was proceeding in a car alongwith deceased Swapnil Shimpi. At about 7.30 pm while they reached near Saibaba Temple in the vicinity of Paldhi, a motorcyclist intercepted the car. There were two riders on the motorcycle. Both of them approached towards the car and made accusations against Swapnil Shimpi that he has dodged a vehicle. With this they attempted to remove key of the car. At the same time, one more motorcycle came from backside on

which two persons were riding. One of them suddenly entered in the car and insisted to take car towards police station. One of them slapped Swapnil. He was holding a knife. Because of such incident, informant came out of the vehicle. He heard shouts of Swapnil. Thereafter, Swapnil alighted from car alongwith a bag containing money. One of the person amongst motorcycle riders attempted to snatch the money bag. After sometime, peoples gathered. Looking to the increasing number of the persons, motorcycle riders flee away from the spot. It was found that Swapnil had suffered with bleeding injury. His shirt was torned and stained with bloods. Thereafter, Swapnil was taken to Civil Hospital, where Doctor declared him dead. On the basis of the aforesaid information, crime no.411 of 2021 came to be registered with Police Station Dharangaon, District Jalgaon for the offence punishable under sections 302, 393 of the Indian Penal Code. Investigation progressed. During course of the investigation, applicant came to be arrested on 29.11.2021. Since then, he is behind bar.

3. Mr. Abhaysingh Bhosale, learned advocate appearing for the applicant submit that the applicant has been falsely implicated in the aforesaid crime. According to him, material in the charge-sheet do not depict any role against the applicant in commission with the subject crime. He would submit that role of inflicting knife injury to deceased Swapnil is attributed against accused no.1 Sunny Pawar, who is already released on bail by the orders of this Court. Even, accused Shashikant Pawar and Vikram Sarvan are released on bail, who

are attributed similar role as against the applicant. He would submit that trial is likely to take it's own time. The applicant is behind bar for almost two years. Considering the role attributed against the applicant, his further detention need not be permitted. He would submit that evidence on record is not sufficient to hold that applicant was a member of conspiracy.

4. Learned A.P.P. however strongly opposes the prayer for grant of bail. He would submit that during the course of investigation, identification parade was conducted. First informant identified the applicant. The applicant has played an important role in commission of the offence. He gave information regarding movement of the deceased to the main assailant; so also threatened the informant. The learned APP would further submit that there are three previous offences registered against the applicant, who is a hardened criminal. He would submit that although accused Sunny Pawar is attributed role of causing injury to the deceased, he was not identified by the informant. Therefore, this Court released him by granting bail. The applicant is identified by the informant. So far as other accused persons who are released on bail were not put to the identification parade. Hence, case of the applicant is distinguishable.

5. I have heard the learned advocates appearing for the respective parties and gone through the entire charge-sheet. Apparently, first information report was lodged by companion of the deceased, who has witnessed the incident. However, all the assailants were unknown to him. The

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incident took place at around 8 pm in the evening of November, 2021 when it was dark. Gist of the charge-sheet shows that all accused persons have conspired to give effect to commission of offence keeping eye over the cash amount possessed by deceased Swapnil. They followed him and made an attempt to snatch the bag of money. In that attempt inflicted injury to deceased causing his death. Role of the applicant is attributed in actual incident and he is alleged to have threatened the informant. Although, FIR state about role of four persons, who arrived on two different motorcycles on the spot; by supplementary statement, first informant improved his version to state that Ten persons were involved in commission of the offence. Gist of the charge-sheet alleges that applicant reached on the spot through auto-rickshaw.

6. So far as case as against the applicant is concerned, only his identification by the first informant during test identification parade is taken as basis for filing charge-sheet against him. There is no material to attribute any role of applicant in assault to victim or informant. Applicant not alleged to have holding weapon.

7. It is the trite that identification parade is not substantive evidence. It cannot have sanctity unless corroborated by substantive evidence. The Supreme Court of India in the matter of **Gireesan Nair and others Vs. State of Kerala reported in (2023) 1 Supreme Court Cases 180** by referring to the judgments in case of *Matru Vs. State of U.P.* reported in (1971) 2 SCC 75, *Mulla Vs. State of U.P.* reported

in (2010) 3 SCC 508 and C. Muniappan Vs. State of T.N. reported in (2010) 9 SCC 567 in paragraph no.29 observed thus :-

“The evidence of a TIP is admissible of under section 9 of the Evidence Act. However, it is not a substantive piece of evidence. Instead, it is used to corroborate the evidence given by witnesses before a Court of law at the time of trial.”

8. Although identification parade of the accused is relevant fact under section 9 of the Indian Evidence Act, that itself would not constitute substantive piece of evidence or no conviction can be based on the basis of identification parade unless corroborated by the substantive evidence.

9. Pertinently, accused no.5, who is attributed role of inflicting injury to deceased Swapnil and from whom there is recovery of the weapon of offence has been enlarged on bail. The applicant is behind bar for more than two years. Trial would take its own time. Although, there are criminal antecedents, on the basis of available evidence against the applicant, his further detention need not be continued. The right to speedy trial is now approved to be a constitutional right under Article 21 of the Constitution of India. The incarceration of under trial prisoner for indefinite period is deprecated.

10. Considering the aforesaid legal aspects and factual position emerging from the evidence available on record, case is made out for grant of bail. Hence, the following order.

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ORDER

- i. Bail Application is hereby allowed.
- ii. The applicant - ANKUSH KISAN GAWALI be released on bail in connection with Crime No.411 of 2021 (Sessions Case No.77 of 2022) registered with Dharangaon police station, District Jalgaon for the offences punishable under sections 302, 393, 396, 120-B of the Indian Penal Code on his furnishing P.B. & S.B. of Rs.50,000/- (Rs.Fifty Thousand), on the following conditions :-
 - 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 proof of his residence and contact numbers with the Investigating officer and shall continue to update the same.
- iii. Bail application is accordingly disposed off.

(S.G. CHAPALGAONKAR)
JUDGE

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