

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

BAIL APPLICATION NO.2051 OF 2023

DEORAO GOVIND BENGAL
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Swapnil S. Rathi
APP for Respondents: Mrs. P.J. Bharad.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 5th DECEMBER, 2023

ORDER :-

1. The applicant seeks regular bail in connection with Crime No. 147 of 2023 registered with Basamba police station, Dist. Hingoli for the offences punishable under Sections 302, 324, 212 r/w. 34 of IPC.

2. The investigation was set in motion on the basis of the information given by Shaikh Sohail Shaikh Rashid alleging that on 6.6.2023, he parked his vehicle in front of his house. The younger brother Shaikh Sadiq Shaikh Rashid helped him in parking the vehicle in open space. Thereafter, he entered in the home. About 15 minutes later, his wife informed him that a quarrel is going on in front of the home. Thereupon, he went out of the home and found that his younger brother Shaikh Sadiq was running towards house followed by accused Sheshrao, Vitthal, Kisan and Deorao. It is further alleged that accused Sheshrao was holding a knife in his hand. Accused Vitthal was holding a stick, accused Kisan was holding an iron rod and accused Deorao (present applicant) was holding stone. It is further alleged that accused persons

caught hold of his brother and assaulted him by weapons in their hands. On account of such assault Shaikh Sadiq suffered injuries. Blood was oozing from his back and the body. He was taken to hospital, where he was declared dead.

3. Accordingly, offence punishable under Section 302, 324 r/w. 34 of IPC came to be registered against the accused persons. The applicant is arrested on 7.6.2023. Investigation progressed. During the course of investigation, post mortem report is collected which depicts cause of death as *Haemorrhagic shock due to stab injury*. The statement of the witnesses are recorded under Section 164 of Cr.P.C. Statement of Alim Khan Siraj Khan who is alleged to be the eye witness of the incident, states that the accused Sheshrao had inflicted a blow of knife on the chest of the deceased. He alleges that the applicant/accused Deorao was seen beating the mother of Sadiq. Similarly, statement of Shaikh Alima Shaikh Rashid recorded under Section 164 attributes Sheshrao being author of bleeding injury.

3. Mr. Rathi, learned counsel for the applicant would submit that the allegations in the FIR are omnibus. Although the applicant is alleged to have holding a stone in his hand, no further specification regarding his role is given in the FIR. He would submit that on consideration the statement of the eye witnesses recorded under Section 164 of Cr.P.C., no role in causing injuries to the deceased can be attributed against the applicant. The applicant is behind bars for more than 5 months. The investigation in the matter is complete. Charge sheet is filed. Further detention of the applicant would not be necessary. Therefore, he urges that the applicant be released on bail.

4. Learned APP strongly opposes the prayer. He would submit that the FIR specifically names the applicant to be one of the assailants alongwith other accused. He was holding stone in his hand. He would invite attention of this Court to the recovery panchanama, whereby, blood stained clothes are recovered from the applicant under Section 165 of Cr.P.C. He would submit that it is a case of murder. All the accused shared common intention. Role of the applicant cannot be segregated from other accused persons. As such, she urges to reject the application.

5. Having considered the submissions advanced, prima facie, the FIR indicates that applicant is named therein. It is alleged that the applicant and other accused persons followed the deceased. The applicant was holding a stone in his hand. Accused Sheshrao is alleged to be holding a knife. It is further alleged that all the accused persons assaulted deceased using the weapons in their hand. Accordingly, deceased Shaikh Sadiq suffered multiple injuries. Perusal of the post mortem report depicts cause of death to be “*Haemorrhagic shock due to stab injury*”. Apparently, the applicant is not attributed with stab injury. However, he is alleged to be holding stone in his hand. The allegations in the FIR as far as applicant are concerned, are vague in nature. Further the statement of witnesses recorded under Section 164 depicts that the main role of causing stab injury is attributed against accused Sheshrao. The statement of witness Alim Khan clarifies that the applicant was seen beating the mother of Sadiq. However, there is no corresponding medical record regarding the injuries suffered by mother of Sadiq.

6. On prima facie consideration of the material available in the

charge sheet, it is difficult to hold that the applicant has any role in assaulting deceased Sadiq. Even the cause of death does not resemble with the role attributed against the applicant. In that view of the matter, a case is made out for grant of bail. Hence, the following order :-

O R D E R

- (i) The application is allowed.
- (ii) Applicant - Deorao Govind Bengal, be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- (rupees fifty thousand), with one solvent surety of the like amount, in connection with Crime No. 147 of 2023 registered with Basamba police station, Dist. Hingoli for the offences punishable under Sections 302, 324, 212 r/w. 34 of IPC, on the following conditions :
 - [a] The applicant shall not tamper with the prosecution evidence.
 - [b] The applicant shall attend each and every effective date of trial
 - [c] The applicant shall not establish contact with any of the witnesses named in the charge sheet.
 - [iii] Needless to mention here that the observations made above are on prima facie consideration of the material on record and are made only for the purpose of deciding the application.
 - [iv] The application stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-