



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

934 BAIL APPLICATION NO. 2088 OF 2023

Bhausahab Vitthal Waghule

....Applicant

VERSUS

The State Of Maharashtra

.....Respondent

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Advocate for Applicant : Mr. N.B. Narwade

APP for Respondent : Mr. A.S. Shinde

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(CORAM : S. G. CHAPALGAONKAR, J.)

Dated: December 13, 2023

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PER COURT :-

1. The applicant seeks regular bail in connection with Crime No.0254 of 2023 registered with Supa police station, Tq. Parner, District Ahmednagar for the offence punishable under section 302 of the Indian Penal Code.

2. The investigation was set in motion on the basis of the information given by one Amol Bhimaji Kothavale, who is brother of deceased Ankush Kothavale. He alleges that on 26.5.2023 he received information from one Chandrakant Kothavale that Ankush is laying injured in a field situated at Parner Fata to Ralegansiddhi Canal. Informant rushed to the spot and found that his brother has been killed by unknown persons. Blood was oozing from injuries on the head. Accordingly, it is alleged that unknown person has caused murder of the deceased. During course of the investigation,

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applicant has been arrested on 30.5.2023. He was remanded to police custody. After completion of the investigation, charge-sheet has been filed for the offence punishable under section 302 of the IPC. Prayer of the applicant for grant of bail has been rejected by the Court of Sessions vide order dated 2.11.2023.

3. Mr. Narwade, learned advocate appearing for the applicant would submit that case of the prosecution is based on circumstantial evidence. However, evidence on the charge-sheet is bereft to make out any offence against the applicant. He would further submit that prosecution relies upon two circumstances. Firstly, applicant seen in the company of victim before his death. Secondly, there is recovery of clothes as well as a blood stained stone, which is alleged to be weapon of offence. He would contend that this much evidence is not sufficient to complete the chain of circumstances. Hence, urges to release the applicant on bail.

4. Learned A.P.P. strongly opposes the prayer. He would submit that blood was found on the stone that has been recovered at the instance of the applicant under discovery panchnama. The applicant was last seen together in company of victim, chain of circumstances is complete.

5. Having considered the submissions advanced and after going through the contents of the charge-sheet, it is apparent that, case of the prosecution is based on circumstantial evidence. As per the case of prosecution, three

circumstances are pressed into service. Applicant seen in the company of the deceased. One Mr. Dilavar Ramja Shaikh identified the applicant while riding on motorcycle alongwith the deceased. Secondly, memorandum statement of the applicant leading to discovery of the stone with blood stains, thirdly recovery of clothes under the same panchnama.

6. So far as first circumstance that the applicant was seen in the company of the victim, it is based on some CCTV footage that was shown to the witness, who identified the applicant to be the person who was riding on the motorcycle alongwith the deceased person. However, source of such CCTV footage is not the part of charge-sheet. Spot panchnama shows that a stone weighing 20 kgs has been recovered from the spot; on which blood stains were seen. Even a bottle is seized from the spot. As per narration in the FIR, deceased was habitual drinker. Recovery of stone is shown from the spot of the incident itself. Therefore, further recovery of stone at the instance of the applicant does not appear to be significant. Admittedly, applicant had no acquaintance with the deceased nor had intention to kill him. In this background, material in the charge-sheet prima facie bereft to make out case against the applicant, however, these observations are based on prima facie consideration and are made only for purpose of disposal of this application. Learned APP confirms that no criminal antecedents are reported to discredit the applicant. As such, case is made out for grant of bail subject to certain conditions. Hence, the following order.

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ORDER

- i. Bail Application is hereby allowed.
- ii. The applicant - Bhausaheb Vitthal Waghule be released on bail in connection with Crime No.0254 of 2023 registered with Supa police station, Tq. Parner, District Ahmednagar for the offence punishable under section 302 of the Indian Penal Code on his furnishing P.B.&S.B. of Rs.50,000/- (Rs. Fifty Thousand), on following conditions :-
 - a] The applicant shall not tamper the prosecution evidence in any manner.
 - b] The applicant shall attend each and every effective date before the trial court.
- iii. Bail application is accordingly disposed off.

(S.G. CHAPALGAONKAR)
JUDGE

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