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BA 2179.23 sr. 938.odt

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

BAIL APPLICATION NO. 2179 OF 2023

MAHADEV KISAN BHALERAO

....Applicant

VERSUS

THE STATE OF MAHARASHTRA

.....Respondent

.....
Advocate for Applicant : Mr. Shaikh Sohail Subhedar.

APP for Respondents: Mr. S.A. Gaikwad.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 14th DECEMBER, 2023

ORDER :-

1. The applicant seeks regular bail in connection with Crime No. 193 of 2023 dated 9.5.2023, registered with Mukundwadi Police Station, District Aurangabad for the offences punishable under Sections 302, 324, 323, 504, 506 r/w. 34 of IPC.

2. The investigation was set in motion on the basis of information given by Sanjay Bhanudas Vahul, who alleges that on 8.5.2023, deceased Gautam alongwith Amar Vahul had been to accused Vilas Karchunde for bringing Centering material. At that time, there was a quarrel between Gautam and Vilas. During said incident, accused Vilas, his wife Vaishali, applicant Mahadeo and accused Ashwini assaulted the deceased by fists and kick blows. Accused Vilas is alleged to have assaulted Gautam by iron rod on his stomach and head. The informant further alleges that when he was trying to pacify, accused Vilas hit him on the legs. When Gautam was taken to the hospital where the doctor declared him as dead.

3. On the basis of aforesaid information, Crime No. 193 of 2023 has been registered against the applicant and others. It appears that applicant was granted ad-interim pre-arrest bail by this Court. Meanwhile, the investigation progressed and charge sheet came to be filed. Thereafter, the applicant surrendered before the Magistrate on 7.10.2023. Since then he is behind bars.

4. The learned advocate for the applicant would submit that the applicant has been falsely implicated. He is resident of Beed and came to meet his friend. By inviting attention of this court to the contents of the FIR so also post mortem report, he would point out that the deceased died because of ***shock and haemorrhage due to blunt trauma abdomen***. The applicant is not author of such injury. Such allegations are restricted against accused Vilas. He would further submit that there are material contradictions in the statement of the witnesses. Hence, he urges for grant of bail.

5. Learned APP strongly opposes the application. He would submit that the contents of the FIR clearly depict active role of the applicant. He had caught hold of the deceased and facilitated the main accused Vilas to inflict blow on the abdomen and head of the deceased. Therefore, he opposes the prayer for grant of bail.

6. Having considered the submissions advanced, it is apparent that on the information given by Sanjay Vahul, FIR came to be registered on 9.5.2023. The alleged incident took place on 8.5.2023 at about 4.00 p.m. Thus, there is delay in lodging the FIR. The narration in the FIR suggests that there was quarrel between deceased Gautam and Vilas. Vilas hit the iron rod on the stomach and head of the deceased Gautam. The allegations against the applicant is limited that he, alongwith co-accused persons assaulted deceased by fists and kick blows.

7. The statement of eye-witness Amar appears to have been recorded on 9.5.2023, wherein, he alleges that the applicant had caught hold of deceased Gautam while Vilas gave blows of iron rod on his stomach. However, in his statement under Section 164, he attributes allegation only against Vilas. No specific attributions are made against the applicant.

8. The post mortem report suggests cause of death to be shock and haemorrhage due to blunt trauma abdomen, which corresponds to the assault by accused Vilas. On prima facie consideration of the material on record, the role of the applicant is not clearly established. Investigation is complete, charge sheet is already filed and co-accused Nos. 2 and 3 are already enlarged on bail, the applicant deserves to be released on bail. Hence, the following order :-

: O R D E R :

- (I) The application is allowed.
- (ii) Applicant – Mahadev S/o. Kisan Bhalerao, 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, Crime No. 193 of 2023 dated 9.5.2023 registered with Mukundwadi Police Station, District Aurangabad, for the offences punishable under Sections 302, 324, 323, 504, 506 r/w. 34 of IPC, on the following conditions :-
 - (a) He shall not tamper with the prosecution witnesses.
 - (b) He shall attend each and every effective date before the trial court.
 - (c) He shall indulge in criminal activity.
- (iii) The application stands disposed of.

**[S.G. CHAPALGAONKAR]
JUDGE**

grt/-