

SA Pathan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.179 OF 2023

Ashish Vinayak Mahadik	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Satyavrat Joshi i/by Nitesh Jaywant Mohite, for the Applicant.

Mr. Rutuja Ambekar, APP for State-Respondent.

CORAM : AMIT BORKAR, J.

DATED : JUNE 5, 2023

P.C.:

1. This is an Application filed under Section 439 of the Code of Criminal Procedure, 1973, (for short 'Cr.PC.') in connection with CR No.1 of 2022 registered with the Paud police station for offences punishable under Sections 302 read with Section 34 of the Indian Penal Code (for short 'IPC') and under Section 4 read with Section 27 of the Arms Act.

2. The gist of the prosecution case is as under:

One Kuldeep Hiranman Pawar lodged the First Information Report (for short 'F.I.R.') on 1st January, 2022 alleging that he is residing with a joint family consisting of his wife, children, brother Abhijeet @ Sonya, his wife Swati and their children. His wife Swati on 27th December, 2022 informed him that the accused No.1 Rajendra and Abhijeet had quarrel with each other at Belawade village. Accused No.1 Rajendra was having suspicion that his wife

had an affair with Abhijeet. It is alleged that on 28th December, 2021 around 8:00 am accused No.1 Rajendra came along with his wife Rekha at the house of Abhijeet. Abhijeet was not present at that time. Accused No.1 told Abhijeet's wife that her husband is having an extra marital affair with his wife and threatened to kill her husband thereafter he left from his house. It is alleged on 1st January, 2022 at around 11:00 am Abhijeet went to Katkari wasti, village Belawade, however, he did not return and therefore, his wife asked his brother Mahesh to search for him. His wife learnt at around 11:30 pm that there had been quarrel between the deceased and accused No.1 Rajesh. It was alleged that their neighbor Usha Tonde had also informed to informant at about 01:30 pm that quarrel had taken place between Abhijeet and accused No.1. Therefore, informant went to the Katkari wasti, village Belawade. He found deceased in pool of blood and serious injured. He saw various injuries caused by sharp weapon over forehead, chest and face of deceased. Abhijeet has succumbed to these injuries. The informant, therefore, lodged CR. No. 01 of 2022.

3. The investigating officer carried out investigation and after completion of investigation filed charge sheet against the accused persons including the Applicant. The Applicant filed Application under Section 439 of Cr.PC. seeking bail before learned Sessions Judge, the said Application has been rejected by learned Sessions Judge. Aggrieved thereby, the Applicant has filed the present Application.

4. The learned Advocate for the Applicant invited my attention

to the order passed by the co-ordinate bench of this Court in the Criminal Bail Application No.75 of 2023 released co-accused Sandeep Shankar Mahadik on bail. He submitted that the alleged eye witness statement was recorded after 50 days. He stated about the alleged incident attribute a specific role to each co-accused. He submitted that wife's statement was also recorded after a period of 50 days. According to him except the statement of wife and brother-in-law Mahesh there is no other material against the Applicant. The recovery of sickle, bloodstained cloths and cell-phone, these are material on record against the Applicant.

5. The learned APP objected to grant relief on bail to the Applicant. She submitted that delay in recording of statement can be explained during trial. She submitted that the bloodstained cloths, sickle and cell-phone have been recovered from the Applicant. In this stage, delay in recording statement of wife and brother-in-law is no ground to release the Applicant on bail as the veracity of statements is matter of appreciation during trial. She submitted that the order of co-ordinate Bench of this Court has no application in facts of the present case as the wife and brother-in-law attributed specific role to the Applicant. The wife in her statement stated that the deceased disclosed to her before the incident that the Applicant along with other accused were trapping the deceased.

6. I have considered the material on record. Prima facie, there is recovery of bloodstain cloths, sickle and cell-phone. However, the statement on record which attributed specific role to the Applicant have been recorded after 50 days of incident. It is true

that, it shall be open for the investigating agency to explain the cause of delay during trial. However, at the stage of considering the Application under Section 439 of Cr. P.C. This Court needs to balance liberty of an individual with the rights of the victim. At this stage subject to explanation which may be furnished during trial, it cannot be lost sight of that there is delay of 50 days in recording of statement of wife and brother-in-law. Of course, it shall be open for the prosecution to prove the case based on such statements during trial. However, at this stage based on such statement, the Applicant need not incarcerated in the jail, particularly when investigation is completed and charge sheet is filed.

7. The order passed by the co-ordinate Bench of this Court in Criminal Bail Application No.75 of 2023, as regards co-accused forms additional reason to release the Applicant on pre arrest bail. Hence, following order is passed:

ORDER

- i. The Application is allowed.
- ii. The Applicant Ashish Vinayak Mahadik be released on bail in CR. No.01 of 2022 registered at Paud police station, Pune for the offences punishable under Sections 302 read with 34 of IPC and under Sections 4 read with 27 of the Arms Act, on furnishing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty Five Thousand only) with one or two sureties in the like amount.
- iii. The Applicant shall remain present before the trial Court

on each date unless exempted by the Sessions Court.

iv. The Applicant shall furnish details of his residence and cell-phone number to the investigating officer and shall communicate change of address, if any, to the investigating officer within two (2) weeks from change of such address.

v. The Applicant shall attend the concern police station once in a month on 1st Monday between 11:00 am to 2:00 pm till conclusion of trial.

vi. The Applicant shall not tamper with the evidence of the prosecution and shall not influence the witnesses.

8. The Bail Application stands disposed of.

(AMIT BORKAR, J.)