



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 BAIL APPLICATION NO. 2 OF 2024

SURESH BABASAHEB FARTADE

VERSUS

THE STATE OF MAHARASHTRA

Advocate for Applicant : Mr. Salunke Sudarshan J.
APP for Respondent/State : Mr. Mukesh K. Goyanka
Advocate assisting to PP : Mr. Shrikant G. Kawade

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 23rd FEBRUARY, 2024.

PER COURT :-

1. The applicant is seeking bail under section 439 of the Criminal Procedure Code, 1973 (for short, "Cr.P.C."). The applicant has been arrested in connection with crime No. 193 of 2023 registered with Police Station, Washi, Dist. Osmanabad, for the offences punishable under Sections 302 read with 34 of the Indian Penal Code.

2. It is averred in the report that son of the informant went for party and informant received phone call from one Datta Raut that his son Rahul felled from the vehicle. He immediately went there and saw that his son was lying there. Therefore, he lodged the report.

3. The learned advocate of the applicant submitted that there is an unreasonable delay for recording the statements of witnesses. The postmortem report shows lacerated wounds. Though the clothes of this applicant are seized, there are no blood stains. Prima facie

material is not available against this applicant. The applicant has no criminal antecedents. He will not flee away from the trial. Co-accused Ashwini, wife of deceased Rahul is released on bail. It is lastly prayed to allow the application.

4. The learned APP for the State submitted that the applicant is booked for serious crime of murder. He committed murder of Rahul as he was having love affair with co-accused Ashwini, who is wife of deceased Rahul. Prior to the incident, there was phone call between them and they with an intention to kill him planned his murder. When Rahul went to a party along with this applicant and one co-accused, he was murdered. The learned advocate assisting to prosecution submitted that there is supplementary charge-sheet filed after the allegations are made against the Investigating Officer that he is not properly investigating the crime. He did not submit the call details of phone calls between Ashwini and this applicant. The investigating officer was changed. Thereafter, supplementary charge-sheet is submitted by another Investigating Officer, in which call details are submitted. Considering all these aspects, it is lastly prayed to reject the application.

5. Perused the charge-sheet, particularly report and the statements of the witnesses. No doubt, there is considerable delay for recording the statements of the witnesses but at the same time, there are allegations made against the Investigating Officer Mr.R.N. Sasane, API, Police Station, Washi that he is not properly

investigating the case. Another investigation officer was appointed and the supplementary charge-sheet is submitted. Merely because the Investigating Officer has committed some mistakes, the accused is not entitled for benefit of doubt. The call details which are filed on record show that there were phone calls between the co-accused Ashwini and this applicant some hours before the incident, which shows that there was some conversation between them. The case is based on circumstantial evidence. Statement of witness Suresh Bappa Shinde, which was recorded immediately after the incident i.e. second day on 01.07.2023 shows that from his mobile phone Rahul made phone call to applicant and asked that which kind of liquor he prefer, which he is going to purchase i.e. "Rum" or "Whiskey", which shows that Rahul made phone call to this applicant from the phone of Suresh Bappa Shinde at about 8 'O' clock on 30.06.2023 some hours before the incident. There is a statement of Suresh also that his mobile phone was used by Rahul for calling this applicant. There is statement of Prakash Uttam Fartade, which was recorded on 19.08.2023. He noticed that there were some plastic glasses having liquor and one bottle of liquor found on the spot where the applicant and co-accused attended the party. No doubt, his statement is recorded after more than one and half month. But if the statement of mobile hand set owner is considered along with the phone call details, the complicity of this applicant in this crime is prima facie established. There is material evidence against this applicant. Considering all these reasons as well as fact that the applicant may

pressurize the prosecution witnesses or may flee away from the trial as he is prosecuted for murder for which life imprisonment or death penalty is prescribed. Further as per the guidelines and law laid down by the Hon'ble Supreme Court in the cases of ***Deepak Yadav Vs. State of Uttar Pradesh and another, (2022) 8 SCC 559 and Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and another, (1987) 2 SCC 684***, the applicant is certainly not entitled for bail as there is prima facie reasonable ground to believe that the applicant had committed the offence. The application, therefore, deserves to be rejected. The application is rejected accordingly.

6. It is made clear that the observations made in this order are prima facie in nature and the trial court shall not get influenced while conducting the trial.

(SANJAY A. DESHMUKH, J.)

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