



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

934 BAIL APPLICATION NO. 116 OF 2024

Babasaheb Narayan Munde

..APPLICANT

-VERSUS-

The State of Maharashtra

..RESPONDENT

Advocate for Applicant : Ms. Ashwini A. Lomte

APP for Respondent/State : Mr.K.S. Patil

.....

CORAM : SANJAY A. DESHMUKH, J.
DATED : 15th MARCH, 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. 123 of 2023 registered with Police Station, Sonpeth, Tq. & Dist. Parbhani for the offences punishable under sections 302, 506, 34 of the Indian Penal Code and under section 4/25 of the Arms Act.

2. It is averred in the report by one Maya Devanand Ujgare that her father-in-law died before 15 years and she is residing with her husband. Her mother-in-law Vimalbai is residing with her paramount namely Pandit Londhe, resident of Parali Vaijnath, Dist. Beed. Her sister-in-law Mangal Vithal Gaikwad is residing separately

from her husband and since last 8 years, she is residing with the applicant. The applicant used to doubt her character, therefore, Mangal left his house and she came to stay with her mother Vimalbai from 01.05.2023. Thereafter, Balu Mundhe came there and insisted Mangal to stay with him. He raised quarrel with her mother. She expelled him. That time, he threatened to eliminate her. On 15.05.2023, the applicant threatened Mangal that he will eliminate her mother by making phone call. On the same day in the evening, the informant was intimated by Bhagyashree Ujagare that Vimalbai and her paramount Pandit Londhe are seriously assaulted. She immediately went there. Vimalbai was lying there having injuries to her neck, back, head and thumb of right hand. Blood was oozing. When she asked her as to who assaulted her, she pointed out the door of her house by the body language. Thereafter she fell down. When they went towards the door of room, she saw that Pandit Londhe was also lying injured having injuries to his head and hand. Thereafter the door was opened and she saw that Mangal Gaikwad was slept in the room. She awoken her and pointed out this incident. That time, she said that the applicant had threatened her mother that he will eliminate her. The report was lodged on the second day of the incident.

3. The learned advocate for the applicant submitted that

the case is based on circumstantial evidence. Though the clothes of the applicant are seized but while seizing clothes no blood stains were found. Extra judicial confession of Seema Kedare is recorded after six days of the incident that this applicant and co-accused Vilas went to her after the incident and made extra judicial confession before her that they have committed murder of Vimalbai and Pandit Londhe. She noticed one injury to his hand.

4. The learned advocate for the applicant thereafter pointed out the papers of treatment of the applicant at page no.142, the injury is mentioned at left hand at left little and ring finger laterally, however, size is not mentioned and another is at page 147, in which the injury is mentioned at left hand below the wrist join. Two papers of medical treatment show that there is different handwriting. The learned advocate for the applicant further pointed out that while seizing the clothes of this applicant, the blood stains were not noticed, therefore, those are not mentioned in the report. However, in the list of articles in description coloumn of this applicant, it is mentioned that the clothes were having blood stains. One of Katti/sickle was seized from the same from where the clothes were seized after the second day of the seizure of clothes. However, the sickle is at the instance of the applicant under section 27 of Indian Evidence Act, however, there are blood stains.

5. The learned advocate for the applicant submitted that the applicant is arrested on 19.05.2024. He has roots in the society. He will not flee away from the trial. She lastly prayed to allow the application.

6. Learned A.P.P. for the respondent-State has strongly opposed the application and pointed out that the applicant has criminal antecedents and he was arrested in crime registered under section 65(e) of the Maharashtra Prohibition Act, 1949. It is a case of double murder. There is strong motive as he has threatened to the daughter of Vimalbai with whom the applicant was loving that he will eliminate her. He further pointed out the postmortem report, which shows that these two persons are died by homicidal attack. He pointed out the statements of the witnesses particularly the witness Seema Kedare to whom the applicant made extra judicial confession after the incident within some hours. He therefore prayed to reject the application.

7. Perused the charge-sheet, particularly the report and statements of the witnesses as well as seizure panchanama and postmortem report. The case is based on circumstantial evidence. Extra judicial confession of Seema Kedare is not recorded

immediately after the incident, but it is recorded on 6th day of the incident. The knife seized at the instance of this applicant is having blood stains. The clothes of the applicants were seized, however, there were no blood stains, which are mentioned in the seizure panchanama under section 27 of the Indian Evidence Act. However, blood stains on those clothes are mentioned in the list of the articles of this applicant, which was sent for C.A. for analysis and report. No doubt there is injury sustained to this applicant, however, its size is not mentioned and some additional handwriting over the papers of his treatment creates, prima facie, doubt as to the nature, size and age of the injury. If all these aspects are considered, the applicant has made out a case for granting bail on the principle that 'bail is rule and jail is exception'. The applicant has roots in the society. He will not flee away from the trial. The trial will take long period. However, considering the possibility of pressurizing the witnesses and tampering the evidence particularly the evidence of daughter of late Vimalbai some stringent conditions can be imposed. The application, therefore, deserves to be allowed. Hence, the following order.

O R D E R

- I. Application is allowed.
- II. The applicant in connection with crime No. 123 of 2023 registered with Police Station, Sonpeth, Tq. & Dist. Parbhani for the offences punishable under sections 302, 506, 34 of the

Indian Penal Code and under section 4/25 of the Arms Act be released on bail on furnishing personal bond of Rs.50,000/- with one surety of the like amount on following conditions:-

- a) The applicant shall not pressurizing the prosecution witnesses and tamper with the prosecution evidence in any manner.
- b) The applicant shall not enter in entire Sonpeth Tahsil, Dist. Parbhani till the conclusion of trial.

III. If breach of any of the above conditions is noticed by the trial Court, the trial Court is at liberty to proceed against the applicant for cancellation of bail without reference to this Court.

(SANJAY A. DESHMUKH, J.)

sga