

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 174 OF 2024

Rakesh @ Rocky Satyanarayan Kamble

VERSUS

The State Of Maharashtra

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Advocate for Applicant : Mrs. Rashmi S. Kulkarni a/w Ms. Namita
Thole & Mr. Bhushan M. Kathar

APP for Respondent/State : Mr. A.S. Shinde

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CORAM : S.G. MEHARE, J.

DATED : MARCH 21, 2024

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the State.
2. The applicant is claiming bail in Crime No.88 of 2020 registered with Kopergaon Police Station, Ahmednagar for the offences punishable under Sections 302, 452, 143, 147, 148, 149, 120-B, 75 of the Indian Penal Code and Sections 3/25, 4/25, 7/25 and 27 of the Arms Act.
3. Learned counsel for the applicant submits that the allegations against the applicant were that he was found sharing food with the main accused Ravi Shete in a hotel after four hours of the alleged incident. He was captured in CCTV footage. He was arrested after around four months of the incident. The Investigating Officer conducted the recovery panchnama under Section 27 of the Indian

Evidence Act and recovered a pistol and some live cartridges at his instance from a dicky of a unused car of his distant relative at Pune. However, the residues of the cartridges were not found on the spot that may be used by the pistol. The evidence against the applicant was not found. In the FIR, the description of the unknown accused/assailants was not mentioned. Only the evidence of sharing food with the main accused and recovery of the pistol that too from the unused car parked on the roadside, is not sufficient to keep the applicant behind bar. He has been identified in test identification parade. Similarly situated co-accused namely Sharad Salve and Nitin Avchite have been granted bail. There are no antecedents to the discredit of the applicant. He is languishing in jail for sufficient period. The investigation has been completed and further detention of the applicant is not required for investigation. Hence, he may be granted bail.

4. Per contra, learned APP has strongly opposed the application. He would submit that the applicant was one of the four unknown assailants. The family members of the deceased identified the applicant in test identification parade. He hails from Kolhapur, so he has no reason to be within the area near the spot of the incident. Meeting with friend soon after the incident is not a coincident. The applicant has played an active role in committing the crime. A pistol with live cartridges have been recovered at his instance from a dicky

of a car not in use, that shows his knowledge. The ballistic report supports the prosecution that the pistol was used; and the residues of gun powder was found. The evidence against the applicant is sufficient to establish his nexus with the crime. He would submit that the role attributed to the applicant is different from the roles played by the co-accused who have been granted bail. The offence is serious. Hence, he may not be granted bail.

5. The arguments advanced by both counsels above reveal that the applicant was not named in the FIR. His physical description was also not given in the FIR. However, the only circumstance against him is that four hours after the incident, he was found in the company of the main accused in a hotel. The FIR reveals that only two persons i.e. accused Ravi Shete and Vijay Khade shot fired the deceased and others chopped him with sickle and swords. The prosecution did not recovered any incriminating evidence against the applicant like blood stains on his clothes, blood in nails nor the prosecution has a case that the weapon other than the pistol has been recovered from the applicant. Whether accompanying the main accused in a hotel and sharing food immediately after four hours of the incident is a coincident or part of conspiracy, is a matter of investigation during trial. The only evidence against him is recovery of pistol with live cartridges and he was lastly seen with the main accused. Considering the evidence against him, having no antecedents

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to his discredit, the Court is of the view that his further detention may not be required for the investigation. However, the apprehension of the prosecution of his abscondence may be guarded by imposing certain conditions. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Rakesh @ Rocky Satyanarayan Kamble, be released on bail on executing P.B. and S.B. of Rs.50,000/- (Rupees fifty thousand) with one solvent surety in the like amount in connection with the above crime, on the conditions that he shall not tamper with the prosecution witnesses.
- (iii) The applicant shall attend the trial on each and every effective date.
- (iv) The applicant shall not support other co-accused to create a ground for bail by delay in the trial by remaining absent deliberately.
- (v) The applicant shall report the concerned police station on every Saturday between 10.00 am to 12.00 noon on cell phone to confirm his whereabouts till the conclusion of the trial.
- (vi) Bail before the learned Trial Court.

(S.G. MEHARE, J.)