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

BAIL APPLICATION NO. 584 OF 2024

**ASHOK RAMRAJE PAWAR
VERSUS
THE STATE OF MAHARASHTRA.**

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Mr. S.G. Jadhavar, Advocate for applicant.
Mr. P.D. Patil, APP for respondent No.1.

CORAM : S.G. CHAPALGAONKAR, J.

DATE :- 19TH JULY, 2024.

ORDER :-

1. The applicant seeks regular bail in connection with Crime No. 93 of 2023 registered with Shiradhon Police Station, Dist. Osmanabad for the offences punishable under Sections 302, 364, 324, 323, 504, 506, 143, 147, 148, 149 of IPC.

2. The investigation was set in motion on the basis of information given by Ashabai Mahadeo Kale. She states that on 8.6.2023, she was at home alongwith her husband and family members. All of them were sitting on a platform in front of the house. Suddenly, accused Vikas Kale, Suraj Pawar, Gangaram Pawar, Bablu Pawar, Bappa @ Khajya Ramraje Pawar and other 3 persons, rushed towards her house in a Scorpio Jeep. After alighting from the vehicle, they caught hold of her husband, dragged him in the house. They barged into the room and assaulted her husband. Although she made attempt to rescue him,

accused persons continued to assault him by Kick and fist blows and then dragged him to the vehicle. The report of incident was given to police. Lateron, dead body of informant's husband was found near Mangrul Pati Bus Stop. Consequently, offence came to be registered against 6 named and 3 unnamed accused persons. The accused persons were arrested on 18th August, 2023. On completion of investigation, charge sheet came to be filed.

3. Mr. Jadhavar, learned advocate for the applicant submits that name of the applicant is not appearing in the FIR. Prosecution is trying to contend that accused Bappa @ Khajya referred in the FIR is the applicant. Even otherwise no specific role is attributed to the applicant in commission of offence. The applicant is behind bars for more than one year. The trial has not commenced till this date. Nothing is recovered from the applicant during the course of investigation. No incriminating circumstances can be gathered so as to establish the complicity of the applicant with the crime in question. He would, therefore, urge to release the applicant on bail.

5. Per contra, learned APP vehemently opposes the bail application. He would submit that the name of the applicant is appearing in the FIR. Even the charge sheet would show his name as Ashok @ Kharya Ramraje Pawar. He would further submit that this is a case of brutal murder. One of the witness Sardar Uttamrao Chavan states correct name of applicant amongst the six named accused persons. The dead body of the deceased was thrown away after brutal attack and murder. Post-Mortem report indicates as many as 28 injuries on person of the deceased. The cause of death is shown as "death due to multiple

injuries". House search of the applicant shows that a mobile containing video clip of the incident has been recovered.

6. Having considered the submissions advanced, it is apparent that FIR has been lodged by wife of the deceased, who herself is the eye-witness of the incident. She has named six persons in the FIR alongwith three unknown persons. Accused No.5 is named as Bappa @ Khajya Ramsing Pawar. The statement of witness Sardar Chavan refers to the name of accused referable to applicant as Bappa @ Kharya Ramsing Pawar.

7. The statements of other witnesses appear to be stereo type and the name of the applicant is differently referred. In the entire charge sheet there is no clarity that the applicant is the same person as being referred in the FIR or the statement of witnesses.

8. Coming back to the role of the applicant in the commission of offence, assuming that he is the same person, as referred in the FIR, it can be gathered that the deceased had some dispute with Vikas Bablu Kale i.e. accused No.1. The FIR alleges that in all 9 to 10 persons arrived on the spot in 2 four wheelers and then assaulted deceased Mahadeo and then took him away in the vehicle. No specific role is attributed against the applicant. The statement of witnesses are stereo type. The dead body of the deceased was found later in point of time. As many as 28 injuries were seen on the body of the deceased. However, it is difficult to draw an inference that the applicant is the author of such injuries. So far as other evidence is concerned, recovery of mobile is shown from the applicant. It is alleged that the video clip in the said mobile shows that

Vikas Kale was assaulting the deceased. However, forensic report of such video clip is not part of charge sheet. The recovery of cloths under Section 165 of Cr.PC. is shown but no blood stains noted. No other other incriminating material available in chargesheet. Consequently, it is difficult to draw inference as regards to the exact role played by the applicant in commission of offence.

Even assuming that the applicant was present at the time of incident, whether he was member of the unlawful assembly would be the question to be decided in the trial. The applicant is behind bars since last one year. The trial is at nascent stage. At this stage, it would be apposite to refer to the judgment of the Supreme Court in the matter of ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and other Criminal Appeal No. 2787 of 2024, decided on 3.7.2024*** wherein, the Supreme Court has observed in para. No. 19 thus :-

“19. If the State or any prosecuting agency including court concerned has no wherewithal to provide or protect the fundamental right of an accused to have speedy trial as enshrined under Article 21 of the Constitution of India, then, the State or any other prosecuting agency should not oppose the plea for bail on the ground that crime committed is serious. Article 21 of the Constitution applies irrespective of nature of crime.”

The court has further observed that the object of bail is to secure attendance of the accused at trial and it is indisputable that bail is not to be withheld as a punishment.

9. Keeping in mind the aforesaid principles of law and the fact that trial is yet to commence, applicant has suffered incarceration for

more than one year, a case is made out for grant of bail. Hence, the following order :-

: O R D E R :

[I] The application is allowed.

[II] The applicant – Ashok Ramraje Pawar, 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, in connection with crime No.93 of 2023 registered with Shiradhon Police Station, Dist. Osmanabad for the offences punishable under Sections 302, 364, 324, 323, 504, 506, 143, 147, 148, 149 of IPC, on the following conditions :-

[i] The applicant shall not tamper with the prosecution evidence,

[ii] The applicant shall not enter the village Mal-Karanja, Taluka Kallamb, Dist. Osmanabad till disposal of sessions trial.

[iii] The applicant shall not indulge in similar offences.

[iv] The application is accordingly disposed of.

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

grt/-