



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

BAIL APPLICATION NO. 692 OF 2023

KAUSTUBH SANJAY KAMBLE
VERSUS
THE STATE OF MAHARASHTRA

...
WITH CRIMINAL APPLICATION NO. 1671 OF 2023 IN BA/692/2023

AAKANSHA GOKUL MANTRI
VERSUS
KAUSTUBH S/O. SANJAY KAMBLE AND ANOTHER

...
Advocate for Applicant/accused : Mr. Prashant P. Giri
APP for Respondent/State : Ms. D. S. Jape
Advocate for applicant/complainant : Mr. Shrikant G. Kawade
...

CORAM : S. G. MEHARE, J.
DATE : 21-06-2024

PER COURT :-

1. Heard the learned counsel for the applicant, the learned A.P.P. for the respondent/State and the learned counsel for the complainant.
2. This is the successive bail application of the applicant seeking bail in C.R.No.0315 of 2021 registered with Shivaji Nagar Police Station, District Latur, for the offences punishable under Sections 302 read with Section 34 of the Indian Penal Code.
3. The applicant has been arraigned as accused on the basis of last seen together and evidence of eyewitness. His bail application No.768 of 2022 was disposed of with a liberty to move fresh bail application after six months. The Court has observed

that such application, if any, be decided on its own merit. Thereafter, this application is filed.

4. On 07.07.2023, this Court recorded that the trial Court shall examine the material witnesses in the case and try to conclude the trial within the time span of four months. Till then, this application be kept pending. Hence, this application is pending.

5. Learned counsel for the applicant submits that the eyewitness has been examined on 15.12.2023.

6. The applicant seeks bail mainly on the ground of change in circumstances that at the time of his first bail application, there were no C.A.report, and secondly, as per the Court's order, the material witnesses have been examined. He has vehemently argued that none of the witnesses supported the prosecution. Till date, 20 witnesses have been examined. The first informant had been recalled. The Investigating Officer has been promoted as Deputy Superintendent of Police and transferred to the other place. He has requested the Court in advance, that he would be busy in recruitment process; hence would not be available atleast for a month. So, in any way, if there will be trial, it may take more time to conclude.

7. This Court had called the progress report from the trial Court. It has been informed that five witnesses including Investigating Officer are to be examined. Since there was election, the witnesses could not be served.

8. He also submits that his bail application was never decided on merit and the Court did not express any disinclination to grant bail. He submits that the sole eyewitness did state that some aged persons were assaulting the deceased. The applicant was 19 years old. This is a material discrepancy in his statement. The Investigating Officer did not hold test identification parade. The applicant is from reputed family. The CA report also does not support the prosecution. There is serious doubt about his involvement in the crime. The applicant recently learnt that the deceased was extorted for two years from Latur, Osmanabad and Beed districts. He had many enemies. Therefore, there is no scope to believe the prosecution case. During the trial, he supported the prosecution. He never protracted the trial. There is no material against him.

8. The application has been opposed by the prosecutor as well as the learned counsel for the complainant. It has been argued that though eyewitness did not support the case, there are strong circumstances against the applicant. He was lastly seen in the company of the deceased. As usual, as experienced in the this region, the learned counsel for the complainant has come with a case that applicant's father threatened the complainant. In most of the cases, this defence appears created on ill will and incorrect advice by the so-called legal experts.

9. The five witnesses are to be examined as per the progress report of the trial Court. It appears that the application of the applicant was never decided on merit. The orders of this Court as discussed above appears to have been followed by the trial Court. The C.A. report is also not supporting the prosecution case. The material progress in the trial has been done.

10. Considering the entire aspects of the matter and the material progress in the trial and probable time that would require to complete the trial, it would be inappropriate to keep the applicant behind bar. The applicant has a good case on merit. Hence, the order :-

ORDER

- i) The application is allowed.
- ii) Applicant Kaustubh Sanjay Kamble be released on bail, on furnishing PB and SB of Rs.50,000/-, with one solvent surety of the like amount, in the above crime for the aforesaid offences, on the conditions that,
 - (a) He shall not tamper with the prosecution witnesses.
 - (b) He shall attend the trial on each and every date.
- iii) Criminal Application No.1671 OF 2023 stands disposed of.

**(S. G. MEHARE)
JUDGE**