



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 913 OF 2024 WITH
CRIMINAL APPLICATION NO. 2841 OF 2024

Appa Ananta Fartade

.. Applicant

versus

The State of Maharashtra

.. Respondent

Mr. D. R. Kale, along with Mr. Y. H. Lagad, Advocates holding for Mr.
M. S. Patil, Advocate for the Applicant.
Mr. K. S. Patil, APP for the State.
Mr. S. G. Kawade, Advocate for the informant.

CORAM : S. G. CHAPALGAONKAR, J.
DATE : 16th AUGUST, 2024.

ORDER :

1. At the outset, learned counsel for applicant in Criminal
Application No. 2841/2024 seeks permission to assist the learned
APP.

2. Permission is granted. Criminal Application No.
2841/2024 is allowed.

3. Applicant seeks regular bail in connection with Crime No.
0193/2023 registered with Washi Police Station, District

Osmanabad, for the offences punishable under Sections 302, 120-B read with Section 34 of the Indian Penal Code.

4. The investigation was set in motion on the basis of the information given by Mr. Ranjit Fartade who alleges that his son Rahul has married with Sangita. The family resides jointly with wife of informant, Sangita and son Rahul. The daughter of the informant namely Sonal has married and resides at her matrimonial house. He alleges that on 30.06.2023, at about 11.00 pm, while he was asleep, he received a phone call from Datta Raut informing that Rahul suffered motorcycle accident near a Edgah at Pardhi Pedhi. The informant rushed to the spot in a Swift car along with co-villagers and found his son Rahul succumbed to injuries. The police authorities came in action, conducted panchanama and sent dead body for post mortem to Rural Hospital at Washi. Consequently, Crime No. 0193/2023 came to be registered for offence punishable under Section 302 of Indian Penal Code against unknown person. Applicant came to be arrested in pursuance of aforesaid crime on 30.09.2023. The investigation progressed in crime and charge-sheet has been filed. Applicant moved the Sessions Court for grant of regular bail vide Application below Exhibit 18 in Sessions Case No.

46/2023 however, his Application came to be rejected vide order dated 10.01.2024.

5. Mr. D. R. Kale, learned counsel for the Applicant submits that the Applicant has been falsely implicated in the aforesaid crime. The motive of offence is alleged to be illicit relations of wife of deceased Rahul with accused No. 1 Suresh. No motive is attributed against the Applicant. Mr. Kale would submit that the Applicant has been implicated only on the basis of the statements of so called eye witnesses which are recorded after 2 months of the incident. Apparently, it is a belated attempt to implicate the Applicant. He would submit that prima facie, the statement of the so called eye witnesses is unbelievable. Patently, there is no explanation for delay in recording such statements. So far as recovery of weapon under Section 27 of the Indian Evidence Act is concerned, he submits that it is not of any significance as the weapon does not have blood stains to connect the same with the offence.

6. Per contra, learned APP strongly opposes the prayer for grant of bail stating that the evidence of the eye witnesses recorded under Sections 161 and 164 of Code of Criminal Procedure coupled

with the recovery of weapon under Section 27 of Indian Evidence Act is sufficient to prima facie hold Applicant to be guilty of the offence. Learned APP further points out that the plea for grant of bail moved by co-accused Suresh is rejected by this Court.

7. Learned counsel Mr. Kawade, while assisting learned APP, submits that the release of the Applicant may hamper smooth prosecution. Applicant was absconding therefore, initially charge-sheet was filed against him under Section 299 of Code of Criminal Procedure.

8. Having regard to the submissions advanced, apparently, complicity of Applicant is sought to be brought on record in commission of offence based on police statement of Ramkisan Bhalchandra Shinde dated 06.09.2023 which is recorded after 66 days of the incident. He states that in the night of 30.06.2023, he heard commotion and went out of the house with a torch in his hand and saw that at a distance of about 100 to 150 ft. the Applicant and accused No. 1 Suresh were assaulting deceased Rahul. Similar is the version of witness Audumbar Jejaram Ware. However, he does not disclose Applicant's name. Another witness Prabhakar Laxman

Tambe also records the similar version however, does not identify the Applicant. All these statements are recorded during period from 06.09.2023 to 14.09.2023 i.e. after more than 2 months of the incident. Prima facie, belated version of these witnesses do not inspire confidence. No explanation is put forth for delay in recording statements of eye witnesses. Possibility that they are got-up or set-up witnesses cannot be ruled out at this stage.

9. So far as recovery of weapon under Section 27 of Indian Evidence Act at the instance of applicant is concerned, apparently it has been effected after 30.09.2023. The so called weapon of offence recovered at the instance of Applicant no where depicts blood stains or any other incriminating material to connect the same with the offence. Recovery of clothes is also without blood stains or any incriminating material. Prima facie, Applicant has no motive to be the part of offence. This Court, while rejecting the plea of bail of accused Suresh, has observed that he had strong motive. Similarly, immediately before the incident, there was conversation between deceased and co-accused Suresh. The case of applicant is not comparable with main accused-Suresh

10. In that view of the matter, further detention of applicant need not be continued. Learned APP fairly concedes that no criminal antecedents are to discredit the Applicant. Applicant is behind the bar for almost one year. The trial has not commenced yet. Taking a note of the nature of evidence against the Applicant, he would be entitled for grant of bail subject to certain conditions. Hence, the following order :-

ORDER

- (i) The Application is allowed.
- (ii) Applicant Appa Ananta Fartade be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- (Rs. Fifty Thousand only) with one solvent surety in the like amount, in connection with Crime No. 0193/2023 registered with Washi Police Station, District Osmanabad for the offences punishable under Sections 302, 120-B read with Section 34 of Indian Penal Code.
- (iii) The Applicant shall not tamper prosecution evidence/witnesses.
- (iv) The Applicant shall not enter village Itkur, Tq. Kalamb, Dist. Dharashiv till conclusion of the trial.

(v) The Applicant shall attend each and every date before the Sessions Court and co-operate for early disposal of the trial.

(vi) Breach of any condition shall entail cancellation of bail.

(S. G. CHAPALGAONKAR)
Judge

dyb