

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 546 OF 2024
WITH
CRIMINAL APPLICATION NO. 2390 OF 2024
IN BA/546/2024

Mahesh Limbraj Kadam

VERSUS

The State Of Maharashtra

...

Advocate for Applicant : Mr. Dnyaneshwar Raosaheb Kale

APP for Respondent/State : Mrs. D.S. Jape

Advocate for Complainant : Mr. Dhananjay Patil h/f Mr. S.S.
Gangakhedkar

...

CORAM : S.G. MEHARE, J.

DATED : JUNE 24, 2024

PER COURT:-

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for the complainant.
2. The applicant seeks bail in Crime No.133 of 2023 registered with Lohara Police Station, District Osmanabad for the offence punishable under Sections 302, 307, 324, 323, 504, 506 r/w 34 of the Indian Penal Code.
3. The admitted facts of the case were that there was an illicit relations of the deceased with the wife of the co-accused. Learned counsel for the applicant submits that the senior villagers have given the understanding to the deceased not to continue the illicit relation, but he continued. The incident happened in front of a

shop on the road which was having hard surface. There are no allegations of using the weapons. This applicant was not present on the spot. However, he was called. In the fit of anger, the co-accused/ the brother of the applicant assaulted the deceased and took him to another place. There was no motive to kill him. He had suffered internal head injury due to fall on the hard surface. The applicant is languishing in jail since last one year. There are no antecedents to his discredit. Whether the offence of murder is made out is a serious issue to be considered.

4. Learned APP and learned counsel for the complainant submit that there were large number of external injuries. The skull was fractured. The applicant and co-accused were not listening the friends who were trying to separate the quarrel. The applicant reached on the spot of the incident on the call of the co-accused. That goes to show that they had predetermined to commit the offence. Deceased was mercilessly beaten that caused his death. The offence is serious. Therefore, the bail may not be granted.

5. The cause of quarrel is extra-marital relation of the deceased with the wife of the co-accused. There are no allegations of use of deadly weapons. The deceased, applicant and co-accused had scuffle. The spot of the incident was a hard surface. The witnesses are consistently stating that the deceased was fallen down on the road in a quarrel. The cause of quarrel goes to the root of the matter.

Under these circumstances, the question would be whether it is a murder or culpable homicide not amounting to murder. Nothing is to be recovered from the applicant. In the circumstances, the Court is of the view that this is a fit case to exercise the discretion under Section 439 of the Criminal Procedure Code. However, the apprehension of the prosecution may be guarded by imposing certain conditions. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant, Mahesh Limbraj Kadam, be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount in the above crime, on the conditions that;
 - (a) The applicant shall not tamper with the prosecution witnesses.
 - (b) The applicant shall attend the trial on each date.
 - (c) The applicant shall stay away from Village Holi, Taluka Lohara, District Dharashiv for six months from the date of his release. However, he is allowed to attend the trial at Dharashiv.
 - (d) The applicant shall intimate his residence and furnish his cell phone number with an undertaking that he will not change his phone number till the conclusion of the trial.

(4)

(iii) Criminal Application No.2390 of 2024 stands disposed of.

(S.G. MEHARE, J.)

Mujaheed//