

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1095 OF 2024

Vishal @ Ishwar Raju @ Rajendra Birute And Another
VERSUS
The State Of Maharashtra

...
Advocate for Applicants : Mr. Ladda Somnath G
APP for Respondent/State : Mr. D.J. Patil

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CORAM : S.G. MEHARE, J.

DATED : JULY 18, 2024

PER COURT:-

1. Heard learned counsel for the applicants and learned APP for the State.
2. The applicants seek bail in Crime No.1126 of 2023 registered with Newasa Police Station, District Ahmednagar for the offence punishable under Sections 302, 120-B r/w 34 of the Indian Penal Code.
3. It is a case arising out of extra marital relationship of the deceased with one of the co-accused even after her marriage. It has been alleged against the applicants that they set a conspiracy, came together. They also called the deceased on the spot of the incident. When he reached there from Nashik, all the accused assaulted him. He has suffered around 23 injuries and died of the multiple injuries.
4. Learned counsel for the applicants raised a doubt on the witnesses who are coming forward. The first person namely Akash

Mahanor saw the deceased in injured condition. The injured told him to call his father. However, he did not disclose the name of either of the applicants. He had no reason to hide the names of the applicants when he was knowing all the assailants by name. He would submit that the prosecution case is based upon the CDR. That does not establish that the applicants were the assailants. Applicant no.1 is the husband of the paramour of the deceased, who is his wife, and co-accused applicant no.2 – Akash was barely the driver of the vehicle and his mobile handset was used for making calls. In nutshell, referring to various statements he would argue that whatsoever the evidence collected against the applicants is not clear. Therefore, no case is made out against the applicants. There are absolutely no allegations against the applicants by which weapons they assaulted the deceased.

5. Learned APP would submit that the CDR is the best evidence available with the prosecution at this juncture. The CDR discloses that all the accused came together, they contacted each other and travelled together. The deceased was called by the wife of the applicant no.1 who had extra marital relationship with the deceased and with a well planned conspiracy, they assaulted the deceased to death. The circumstances are strongly against the applicants. Hence, they may not be granted bail.

6. The prosecution has a case based upon the CDR. Some discrepancies are there. The circumstances are to be assessed by the Trial Court during the course of recording the evidence. *Prima facie*, there appears certain material to doubt the role of the present applicants. At the most, it can be said that they were present on the spot of the incident. But what role they have played, is a matter of evidence. Considering the circumstances and the material with the prosecution, the applicants deserve bail. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicants, Vishal @ Ishwar s/o Raju @ Rajendra Birute and Akash s/o Dattatray Kokate, be released on bail on furnishing PB. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) each with one solvent surety of the like amount each in the above crime, on the conditions that;
 - (a) The applicants shall not tamper with the prosecution witnesses and shall attend the trial on each and every date.

(S.G. MEHARE, J.)