

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1052 OF 2024
WITH
CRIMINAL APPLICATION NO. 2785 OF 2024
IN BA/1052/2024

Pega @ Jamuna Sandeep Kale

VERSUS

The State Of Maharashtra

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Advocate for Applicant : Mr. Hange Anirudh R.

APP for Respondent/State : Mr. S.M. Ganachari

Advocate for Complainant : Mr. K.N. Farooqui

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CORAM : S.G. MEHARE, J.

DATED : JULY 11, 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.529 of 2023 registered with Ashti Police Station, District Beed for the offence punishable under Sections 302, 143, 147, 148, 149, 504, 506 of the Indian Penal Code and Sections 37(1)(c) of the Maharashtra Police Act.
3. The prosecution case in brief is that a group of persons including the applicant had been to the spot of the incident. They assaulted the deceased mercilessly by weapons. The role attributed to the applicant is that she was instigating other co-accused to kill him and she pulled the private part of the deceased.

4. Learned counsel for the applicant would submit that the applicant was not named in the FIR. The statement of the eyewitness were recorded after ten days. Considering her role allegedly attributed, her custodial interrogation is not essential. Her husband has also been arraigned as an accused in the crime. He has no contact with her. She has the liability of her four children. Single crime of pick pocketing was registered against her. The said case is pending before the Court. She being a lady having responsibilities of the children, may be granted bail.

5. Learned APP would submit that she was present there on the spot. The delay in recording the statement of the eyewitness has no significance for the reason that immediately after the incident, he informed the first informant who lodged the report. The blood stained clothes were recovered from the applicant. She has played an active role in committing the crime. It was a quarrel between two groups. Therefore, there is possibility of tampering with the prosecution witnesses.

6. Learned counsel for the victim would submit that the applicant has played an active role. Relying on the case of State of U.P. Vs. Naresh (2011) SCC 324, he would argue that the FIR is not an encyclopedia of the entire case. It may not and need not contain all details. Naming the accused therein may be important but not naming of the accused in FIR may not be a ground to doubt the

contents thereof in case the statement of the witness is found to be trustworthy. He would submit that the statement of the eyewitness is trustworthy. He was the first person who informed the first informant about the incident. The applicant was instigating. She was the member of the unlawful assembly. Hence, equally responsible for the offence. She may not be granted bail.

7. It is true that the FIR is not the encyclopedia of the entire case. However, the role attributed to the applicant may be considered. In the statement of the eyewitness, she was shown present on the spot saying that if the deceased is left alive, he would kill them all. She pulled his private part. However, that is not the cause of death. As per the post mortem report, the cause of death was head injury. The law is well settled that while considering the antecedents, the Court has to consider the role attributed to the accused in the crime in which he or she is claiming bail. She was present there. She being a lady, may be treated on different footing. She has the liability of her four children. On the date of the incident, her husband was missing. Bearing in mind the entire facts of the case and the way in which the incident happened, the Court is of the view that no purpose would be served keeping the applicant behind bar. Hence, she deserves bail. Hence, the following order :

ORDER

- (i) Bail Application is allowed.

- (ii) Applicant, Pega @ Jamuna Sandeep Kale, 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 not enter Village Chikali till the conclusion of the trial.
 - (c) The applicant shall not contact any of the witnesses in any mode or manner till the conclusion of the trial.
- (iii) Criminal Application No.2785 of 2024 stands disposed of.

(S.G. MEHARE, J.)