



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

942 BAIL APPLICATION NO. 1683 OF 2024

HARSHAL RAGHUNATH CHAUDHARY

VERSUS

THE STATE OF MAHARASHTRA

WITH

CRIMINAL APPLICATION NO. 3953 OF 2024

IN BA/1683/2024

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Advocate for Applicant : Mr. Bora Satyajit S.

APP for Respondent/s-State : Mr. A. S. Shinde.

Advocate for Informant to assist APP : Mr. Ghatge M. V.

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CORAM : S. G. MEHARE, J.

DATE : 15.10.2024

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and learned counsel for the informant.

2. The applicant seeks bail in Crime No.275 of 2023, registered with Azadnagar Police Station, District Dhule, for the offences punishable under Sections 302, 364, 143, 147, 148, 149, 323, 504, 506, 120-B, 109, 201, 75, 212 of the IPC and Section 4/25 of the Arms Act and Sections 37(1), 37(3) and 135 of the Maharashtra Police Act.

3. The brother of the deceased has lodged the report on the basis of the incident narrated to him by one of the eye witnesses. The accused named in the FIR has killed his brother. The first informant directly went to the hospital where he was admitted. The eye witness has categorically stated how the incident happened. However, there was no dispute that the applicant was not present on the spot of the incident. However, since the deceased had some enmity with one Vinod Thorat and the applicant was working for him, it has been alleged against him that he was a conspirator and gave the contract to the killer. The prosecution is relying on the statement of the co-accused under Section 27 of the Indian Evidence Act wherein he disclosed that the applicant and Vinod Thorat gave him a contract of killing. Except this, the prosecution has no material against the applicant except the past enmity and incident of beating and threatening the deceased.

4. Learned counsel for the applicant would submit that deceased Shubham was working with Vinod Thorat. However, they had some dispute. Therefore, Shubham left his job. One incident happened in 2022 of which the report was lodged against the applicant and Vinod Thorat. He would submit that

only on the basis of the earlier incident, the applicant has been arraigned as an accused in the crime. He was trying to save himself from arrest. However, he could not. Therefore, it cannot be said that he was deliberately absconding. The applicant has no role to play except working with Vinod Thorat. The statement under Section 27 of the Indian Evidence Act is inadmissible. Such statement is not sufficient to establish the nexus of the applicant with the alleged incident. The charge sheet has been filed. Nothing is to be recovered from him. Therefore, he may be granted bail.

5. Learned APP and learned counsel for the victim have vehemently argued that many reports were lodged against the applicant and absconding accused Vinod Thorat for threatening the deceased. Vinod Thorat is a muscle man and involved in various illegal business. Since the deceased was not listening him, he was eliminated by contract killing.

6. Learned counsel for the victim referred to the various statements and the previous non-cognizable reports and vehemently argued that the previous conduct of the applicant is sufficient to link the applicant with the present crime. He was the actor behind curtain. He has also no good past. He has vehemently argued that the Investigating Officer has filed

two charge sheets for the same crime. One is filed under the IPC against some of the co-accused and another is filed before the Special Court against rest of the co-accused for the offences punishable under IPC as well as MCOC Act. The Investigating Officer cannot file such two charge sheets for the same FIR. He has already taken the remedy for this illegality before the High Court and his petition is pending. He would submit that the statement of the co-accused under Section 18 of the MCOC Act is admissible in which the role attributed to the applicant has been disclosed by the co-accused. That statement is deliberately not made the part of this charge sheet. Both charge sheets have direct connection with each other. There should be not two trials for the same crime. Reading Section 7 of the MCOC Act, he pointed out that both the charge sheets are to be clubbed together for common trial. He has strongly opposed the bail application contending that though the deceased was expressing apprehension of danger to his life, the police did not take the serious cognizance and the applicant succeeded in eliminating the deceased. The offence is serious. Therefore, it is harmful to grant him bail.

7. Why two separate charge sheets have been filed by the Investigating Officer is a matter of legal test before the Court in

the petition filed by the petitioner. In this case, the presence of the applicant was not claimed at the time of the alleged incident. The statement of the co-accused under Section 27 of the Indian Evidence Act is not admissible about disclosing the incident and the name of the other co-accused. It has no evidential value. Since the applicant is claiming bail on the basis of the material presented in the charge sheet, the Court has to consider the same material and cannot work into the another crime under MCOC Act and read statement of co-accused under Section 18 of the said Act. The bail is restricted to this charge sheet. Though the grandmother of the applicant had lodged the report against the applicant that they had been to her house and threatened the deceased. The body of FIR does not disclose the date and time of such threats. On scrutiny of the record placed before this Court with the charge sheet, there is no direct evidence against the applicant except the past quarrels. Whether that past quarrels have connection with this crime is a matter of evidence. Considering the facts and material before the Court, the Court is of the view that his further detention would be unjustifiable. Therefore, he deserves bail. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant **HARSHAL RAGHUNATH CHAUDHARY** be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of like amount, on the following conditions :
 - (a) The applicant should not tamper with the prosecution witnesses.
 - (b) He should not enter Dhule town for six months from the date of his release, except for attending the Court trials.
 - (c) He should not meet other co-accused till the trial is concluded.
 - (d) He should attend the trial on each and every effective date.
 - (e) He should furnish his residential proof and cell phone number with the Court as well as the Investigating Officer with an undertaking that he would not change it till the trial is concluded.
 - (f) He should attend the Police Station if called for investigation in connection with this crime on written notice.
 - (g) He should not involve in identical crime.

- (h) He should not drive any of the vehicle of co-accused Vinod Thorat.
- (iii) Criminal application No.3953 of 2024 stands disposed of.

(S. G. MEHARE, J.)

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vmk/-