



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.2072 OF 2024**

Suresh Babasaheb Fartade
Age: 23 years, Occ: Agriculture,
R/o: Itkur, Taluka Kallam,
District Dharashiv.

..Applicant

Versus

The State of Maharashtra,
Police Station Officer,
Washi Police Station, Washi
District Dharashiv

..Respondent

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Mr. S. S. Bora, Advocate for the Applicant.
Mr. V. S. Badakh, APP for Respondent-State.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 03rd DECEMBER 2024.**

ORDER:-

1. The applicant seeks regular bail in connection with Crime No.193/2023 registered with Washi Police Station, Dist. Dharashiv for the offence punishable under Sections 302, 120-B r/w 34 of the Indian Penal Code.

2. The offence has been registered on the basis of information given by Mr. Rajeet Fartade alleging that his son Rahul married with Ashwini. He resides jointly with his wife Sangita, his son Rahul and daughter-in-law Ashwini. It is alleged that on 30.06.2023 at about 11.00 pm, he received phone call from Datta Raut that Rahul suffered accident near Idgah Pardhi. The informant rushed to the spot alongwith co-villagers and found that his son Rahul succumbed to the injuries. The police authorities

came in action, conducted panchanama and sent dead body for postmortem to Rural Hospital at Washi. Consequently, Crime No.193/2023 came to be registered against unknown accused persons for offence punishable under Section 302 of the Indian Penal Code.

3. The applicant came to be arrested on 01.07.2023 on the basis of statement of co-accused Ashwini. On completion of investigation, charge-sheet has been filed on 29.09.2023 as against three accused persons including present applicant. The previous bail application of the applicant was rejected by Sessions Court, Bhoom vide order dated 06.11.2023. Similarly, his Bail Application No.2/2024 has been rejected by this Court vide order dated 23.02.2024.

4. The present application is filed on three grounds. Firstly, this Court granted bail to co-accused Appa Fartade in Bail Application No.913/2024 vide order dated 16.08.2024. Secondly, accusation against co-accused Appa are based on similar set of evidence, hence, applicant is also entitle for bail on principle of parity. Thirdly, applicant is behind bar since 01.07.2023. Till this date, charge is not framed. The trial is likely to be dragged for years together.

5. Mr. Bora, learned Advocate appearing for the applicant

submits that initially offence was registered against unknown culprits. However, on the basis of statement of co-accused Ashwini, applicant has been implicated as an accused. He would submit that co-accused Ashwini as well as Appa are released on bail. Except so called recovery of Sattur (weapon), there is no more evidence against applicant as compare to accused Appa, who is enlarged on bail. According to Mr. Bora arrest of the applicant is merely based on suspicion. The witnesses cited in the charge-sheet are got up or made up witnesses. No blood stains were found on alleged weapon of offence. There is no report of Chemical Analysis to link recovered weapon with the offence. He would submit that till this date, charge is not framed and trial would take its own course. According to him, grant of bail to co-accused Appa and delay in trial are good grounds to consider plea of bail of the applicant.

6. Mr. Badakh, learned APP appearing for the respondent-State strongly opposes the application contending that previous bail application of the applicant has been rejected by this Court on 23.02.2024 after considering relevant material in charge-sheet. Consequently, there is no change in circumstance that will entitle applicant to reiterate his plea for grant of bail. The learned APP further submits that merely because co-accused has been released on bail, the applicant cannot claim that there is change of

circumstance, when his bail plea is rejected on its own merit. The learned APP also submits that applicant had strong motive to commit murder. Therefore, case of the applicant can be distinguished from the co-accused, who has been enlarged on bail. The applicant cannot claim parity with co-accused in the facts and circumstances of the case. The learned APP points out that there are statements of eye witnesses indicating involvement of applicant in commission of offence. Further, there is recovery of weapon at the instance of applicant. The Medical Officer has given report of weapon examination confirming that weapon recovered can cause injuries observed on dead body of victim.

7. Having considered submissions advanced and on perusal of record, it can be observed that applicant has been arrested immediately on next day of the incident on the basis of statement of co-accused Ashwini. After due investigation, charge-sheet has been filed. The applicant moved application before the Sessions Court for grant of bail, the same was rejected on 06.11.2023. Thereafter, applicant approached this Court vide Bail Application No.2/2024, the same has been rejected observing that there is triable material against applicant.

8. Pertinently, this Court granted bail to co-accused Appa Fartade vide order dated 16.08.2024 observing that, *prima facie*,

there is inordinate delay in recording statements of the so called eye witnesses and he is not attributed with any motive in commission of offence.

9. So far as case of the applicant is concerned, apart from strong motive, this Court had observed while dealing with previous bail application that there is evidence in the nature of phone calls between applicant and deceased Rahul. The deceased Rahul was called for a party by the applicant and later on he was murdered. Even, there are call details showing conversation between applicant and co-accused Ashwini. This Court observed that applicant used the phone of Suresh Bappa Shinde for aforesaid conversation and statement of Suresh is also made part of charge-sheet.

10. Although Mr. Bora, learned Advocate appearing for the applicant submits that release of co-accused would be good ground to entertain present application, in view of aforesaid observations, the applicant cannot claim parity with co-accused. The role of the applicant coupled with motive of offence makes his case distinguishable from accused Appa, who is enlarged on bail. Apart from this, no change of circumstance is brought on record that will create right in favour of applicant to ask for bail on principle of parity.

11. It is trite that, change of circumstance desirable for entertaining second bail application must be substantial. Entertaining successive bail application without change in fact situation would amount to virtually overruling the earlier decision. The change in fact and situation must be substantial which has direct impact on earlier decision and not cosmetic change of little consequence. It is not the case that any new material is surfaced giving fresh cause to applicant to reiterate his bail plea. The role of individual accused and material relied by prosecution against them is different. The applicant who is alleged to have illicit relation with co-accused Ashwini i.e. wife of deceased Rahul has certainly strong motive. The applicant could not bring on record any material requiring reconsideration of bail plea. Hence, no case is made out for grant of bail.

12. Consequently, Bail Application stands rejected.

(S. G. CHAPALGAONKAR)
JUDGE