



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

925 BAIL APPLICATION NO. 1869 OF 2023

Ketan Santosh Lomate
Versus
The State Of Maharashtra

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Advocate for Applicant : Mr. D.R.Kale h/f Mr. Kiran D. Jadhav
APP for Respondents: Mrs. P.J. Bharad

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 5th JANUARY, 2024.

PER COURT :-

1. The applicant is seeking regular bail under section 439 of Cr.P.C. in connection with crime No. 63 of 2021 registered with Shirur (Kasar) police station, Beed for the offences punishable under Sections 302, 364, 365, 397, 120(b), 201, 34 of I.P.C. His application below Exhibit-23 in Sessions Case No. 132 of 2021 with similar prayer came to be rejected by the learned Additional Sessions Judge, Beed vide order dated 01.04.2022.

2. The informant averred in the report that his brother was murdered by the applicant and other accused persons. One of the co-accused Dnyaneshwar Gaikwad was seen in the CCTV footage while riding the motor cycle where Vishal was pillion rider. Therefore, he lodged the missing report on 21.5.2021. Thereafter, it was revealed that Vishal was murdered. It is alleged that he was murdered in a saloon shop on 23.5.2021.

3. Learned counsel for the applicant submitted that the applicant is falsely implicated in the crime. Though he has criminal antecedents in one criminal case under section 302 of I.P.C., he is released on bail. Only a spade is recovered at the instance of this applicant. Though there is test identification parade, the procedure as contemplated by criminal manual is not followed. At the most, there is evidence under section 201 of I.P.C. against the applicant. Learned advocate for the applicant pointed out the statements of the witnesses. He submitted that the applicant has roots in the society and he will not flee away from the trial. He prayed for grant of bail.

4. Learned A.P.P. for the respondent-State has strongly opposed the application and pointed out the statements of the witnesses. She pointed out the recovery of spade at the instance of this applicant under Section 27 of Indian Evidence Act. She further pointed out the details of CCTV footage in which the main accused Dnyaneshwar Gaikwad was riding the motor cycle alongwith deceased Vishal. The statements of the witnesses Bhagwan Dhakne and Ajit Khedkar, in which they have stated that three persons came on the motor cycle and they proceeded from that medical shop. At that time, deceased Vishal told them that there are golden ornaments in his sack. The statements of these witnesses do not disclose the name of the present applicant in the CCTV footage. It is lastly prayed to reject the application.

5. The statements of witnesses Bhagwan Dhakne and Ajit Khedkar do not disclose name of this applicant. There is no evidence in the CCTV

footage that this applicant had travelled alongwith co-accused for commission of murder. If the evidence of test identification parade is considered, it can be seen that it does not comply with the requirements as contemplated by Criminal Manual. There is delay for more than two months for conducting test identification parade. No doubt, the applicant is having criminal antecedents but he is released on bail. Considering the fact that the spade/weapon is seized at the instance of the present applicant under section 27 of the Indian Evidence Act, prima facie, he can be held liable for the offence punishable under Section 201 of I.P.C. There is no prima facie material evidence against the applicant under Section 302 of I.P.C. Considering all these aspects and the fact that the applicant has roots in the society and he will not flee from the trial, he can be released on bail on certain conditions. Hence, the following order.

O R D E R

- I. Application is hereby allowed.
- II. The applicant in connection with crime No. 63 of 2021 registered with Shirur (Kasar) police station, Beed for the offences punishable under Sections 302, 364, 365, 397, 120(b), 201, 34 of I.P.C. be released on bail on furnishing personal bond of Rs.25,000/- with one surety of the like amount on following conditions:-
 - a) The applicant shall not tamper with the prosecution evidence in any manner.

- b) The applicant shall not enter in Beed district except on the dates for attending Sessions Case No. 132 of 2021 pending before the Sessions Court at Beed.

(SANJAY A. DESHMUKH, J.)

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