



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 2091 OF 2023

Javed Shah Ali Shah Fakir,
Age 29 years, Occu. Labour,
R/o. Fakir Vada, Pratibha Nagar,
Varangaon, Tq. Bhusawal,
District Jalgaon

.. Applicant

Versus

The State of Maharashtra

.. Respondent

Mr. Chatterji Joydeep, Advocate for Applicant;
Mr. S. R. Wakale, A.P.P. for Respondent/State

CORAM : S. G. MEHARE, J.

DATE : 21-06-2024

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent.
2. The applicant seeks bail in C.R.No.0122 of 2023 registered with Yawal Police Station, District Jalgaon, for the offences punishable under Sections 302 read with Section 34 of the Indian Penal Code.
3. The prosecution has a case of last seen together. To support his contention, the prosecution has examined eyewitnesses who

lastly saw the deceased and the applicant together. However, test identification parade was not held. The prosecution has evidence of the C.C.T.V. footage, in which the applicant was found driving a bike and the deceased was the pillion. The prosecution has recovered the bike and blood stained clothes at the instance of the applicant.

4. The learned counsel for the applicant has vehemently argued that barely producing C.C.T.V. footage is not sufficient. Some witnesses must have identified the person seen in the C.C.T.V. footage, therefore, the applicant may deserve bail. He also pointed out that so far as C.D.R. report is concerned on the same evidence, the co-accused has been granted bail. Therefore, a contrary view would not be taken on this factual aspect.

5. To bolster his argument, he relied on the order passed by this Court at the Principal Seat (Coram: C. V. Bhadang, J.), in the case of ***Sudhir Rajaram Kamthe vs. The State of Maharashtra***, Criminal Bail Application No.4269 of 2021, dated 12.04.2022, and also argued that the circumstances are not strong against the applicant. There is contradiction as regards the blood stains on the weapon recovered at his instance. The motive is missing. The applicant is languishing in jail for sizable period. There are no antecedents to his discredit. Hence, he may be granted bail.

6. Learned A.P.P. for the respondent has opposed the application. He submits that since the applicant and the deceased were only two persons travelling on the bike, there is no reason to doubt the investigation at this juncture. Though, the partial face of the applicant was covered, the bike and knife were recovered at his instance. The prosecution has sufficient evidence to link the accused with the crime. The posture of the applicant was sufficient to identify him. He was acquainted with the complainant. It is a case of illicit relationship. The co-accused has been granted bail only on the ground that she was not seen lastly in the company of the deceased. The offence is serious. A man, who has no concern with the illicit relationship, has lost life. The applicant does not deserve bail.

7. The case of ***Sudhir*** (*supra*) relied upon by the learned counsel for the applicant was totally on a different facts. In the said case, three accused were captured in the C.C.T.V. footage. Therefore, the Court held that identification of those accused was essential. On the contrary, in the present case, the sole accused was lastly seen with the deceased taking him on his bike. *Prima facie*, there is no reason to disbelieve the prosecution as the person driving the motor bike is other than the accused. At his instance, the bike captured in the C.C.T.V. footage as well as the knife has been recovered. That apart, the blood stained clothes have also been recovered.

8. Considering the circumstances in-toto, the Investigating Officer appears to have collected the *prima facie* evidence against the applicant to believe his involvement in the crime. Serious allegations of illicit relationship with the wife of the deceased have been levelled against the applicant. Considering the facts in its entirety, the Court is not satisfied that the applicant deserves bail.

9. Hence, the application stands dismissed.

(S. G. MEHARE)
JUDGE

rrd