



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

925 BAIL APPLICATION NO. 2270 OF 2023

SHAIKH NADEEM S/O SHAIKH RASHID
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Sagar S. Ladda.
APP for Respondent/State : Mr. Satish A. Gaikwad.
...

CORAM : **SANJAY A. DESHMUKH, J.**

DATE : 04th January, 2024.

P.C.:

1 This is an application, under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in connection with Crime No.221 of 2022, registered with Kotwali Police Station, District Parbhani, for the offences punishable under Sections 302, 201, 143, 147, 148 and 149 read with 34 of the Indian Penal Code, 1860 and Section 135 of the Maharashtra Police Act, 1951.

2 It is averred in the report that deceased Mainuddin was addicted to liquor and he used to remain out of the house as he was habitual drunkard. Therefore, his missing report was lodged with the Kotwali Police Station, District Parbhani on 26th July, 2022. Thereafter, the dead body of Mainuddin was found buried. PSI of Kotwali Police Station lodged the report on 27th July, 2022 that this applicant alongwith other four committed murder of Mainuddin by assaulting him by knife and his dead body was buried near the river of bed within the

jurisdiction of Daithana Police Station, District Parbhani.

3 The learned counsel for applicant submitted that other three co-accused are released on bail by this Court. He further pointed out that this Court has observed that co-accused are not captured in the CCTV footage to corroborate the verbal statements of the witnesses. He further pointed out the statement of the witnesses are recorded under Section 161 of the Cr.P.C. as well as the statements recorded under Section 164 of the Cr.P.C. The learned counsel for applicant further pointed out that there is delay for recording the statements of the witnesses. Therefore, though those witnesses are eye-witnesses, their evidence cannot be safely relied upon. The learned counsel for applicant further pointed out the postmortem report as well as the *in-quest*. He pointed out the reasons given by the Trial Court while rejecting the application. He lastly submitted that there is no *prima-facie* evidence against the applicant. He, therefore, prayed to release the applicant on bail.

4 The learned APP for the State strongly opposed the application and pointed out the statements of the witnesses recorded under Section 161 of the Cr.P.C that these witnesses are eye-witnesses of the incident. He submitted that there is direct evidence the applicant and if the applicant is released on bail, then he will pressurize the witnesses.

5 Admittedly, the CCTV footage is of no use to infer the

involvement of any of the accused. There is explanation of delay for recording statements that the accused threatened to the witnesses, therefore, they did not disclose the overt act of any of the accused to the relatives of the victim or the police. However, that itself is not sufficient at this stage to infer that there was threat to these witnesses. It is a matter of evidence.

6 The learned counsel for applicant pointed out the duty allotment register in which the duty was allotted to B. S. Munde on 26th July, 2022 and report is lodged on 27th July, 2022, which means that the fact of burying was known to the accused. If the role of this applicant as alleged by the prosecution is considered with the role of other three co-accused, who are released on bail, then considering the delay caused for lodging the report as well as recording of the statements of the witnesses, the applicant is certainly entitled for bail, as there is *prima-facie* doubtful evidence against him. Considering the orders passed by this Court earlier in Bail Application No.311 of 2023, Bail Application No. 13 of 2023 and Bail Application No.888 of 2023, the applicant is certainly entitled for bail on the ground of parity. The application therefore, deserves to be allowed on certain conditions. Hence, the following order:-

ORDER

- I. The application is allowed.
- II. The applicant in connection with Crime No.221 of 2022,

registered with Kotwali Police Station, District Parbhani, for the offences punishable under Sections 302, 201, 143, 147, 148 and 149 read with 34 of the Indian Penal Code, 1860 and Section 135 of the Maharashtra Police Act, 1951, be released on bail on furnishing personal bond of Rs.50,000/- with surety of the like amount on following conditions:-

- a) The applicant shall not pressurize the witnesses.
- b) The applicant shall not tamper with the prosecution evidence in any manner.

[SANJAY A. DESHMUKH, J.]

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