



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1021 BAIL APPLICATION NO. 2338 OF 2023

Nilesh Dnyaneshwar Desale

VERSUS

The State of Maharashtra

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Advocate for Applicant : Mr. P. R. Kanteshwarkar h/f Mr. Samadhan
H. Jadhav

APP for Respondents: Mr. Mukesh K. Goyanka

Advocate to assist the A.P.P. : Mr. Satyajeet S. Bora

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 13th FEBRUARY, 2024.

PER COURT :-

1. Heard both sides.
2. This is an application for granting bail under section 439 of the Cr.P.C. in connection with crime No. 0022 of 2023 registered with Kasoda police station, District Jalgaon for the offences punishable under Sections 302, 120-B r.w. 34 of the I.P.C. and under Section 4/25 of Arms Act. The applicant's application with similar prayer bearing criminal bail application No. 859 of 2023 came to be rejected by the learned Additional Sessions Judge, Jalgaon, vide order dated 04.12.2023.
3. The informant averred in the report that there was dispute between the applicant and Sachin @ Sonu Devidas Patil. The applicant threatened him that he will eliminate him. On 19.3.2023, at

about 6.00 a.m. when Sachin was proceeding on his motor cycle towards village Bhatkhande, he was assaulted there by the unknown accused. He was immediately taken to the hospital. However he died. It is alleged that this applicant hatched a conspiracy in order to eliminate Sachin and also gave a contract to contract killers. The report was lodged against the applicant and other accused persons.

4. Learned advocate for the applicant submitted that there is no prima facie material against the applicant to connect him with the crime. At the time of alleged incident, he was not there. He pointed out the statements of the witnesses. He further pointed out that due to earlier enmity between the applicant and deceased Sachin, the applicant is falsely implicated in the crime. He lastly prayed to allow the application.

5. Learned advocate for the applicant is relying upon the authority of the Hon'ble supreme Court in the case of ***Maulana Mohd. Amir Rashadi vs. State of U.P. and another, 2012 (2) SCC 382***, in which in para 6, the Hon'ble Supreme Court has held as under:-

“6. It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be

rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

6. Learned A.P.P. for the State strongly opposed the application and pointed out that there is material against the applicant. He is wire puller of the crime. He hatched the conspiracy and executed it. The applicant is contract killer. He had played active role in the said crime. It is pointed out that the applicant is having criminal antecedents of nine cases. Once he was detained for one year under the provisions of The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous Persons and Video Pirates Act, 1981. He will certainly pressurize the witnesses and tamper the evidence. It is lastly prayed to reject the application.

7. Perused the charge sheet. The applicant is booked for serious crime of murder and there is prima facie material against him that he hatched the conspiracy to commit murder of Sachin. No doubt, the statements of some of the witnesses have been recorded belatedly. However the earlier enmity shows that there was strong motive in the mind of the applicant and therefore, he kept himself away at the time of murder and succeeded in executing the conspiracy. The applicant is booked for serious crime and he has criminal antecedents.

8. As far as parity is concerned, though Samadhan Patil, one of the co-accused is released on bail, by this court in bail application No.1596 of 2023 by order dated 7.11.2023, his role is limited that he provided information regarding whereabouts of deceased Sachin and also made some arrangement for stay and food of the main assailants. Considering all these reasons, the possibility of committing the similar nature of crime on the part of this applicant cannot be ruled out. There is also possibility of pressurizing the prosecution witnesses and tamper evidence. He had misused the liberty of bail granted to him in earlier cases.

9. In so far as the authority in the case of ***Maulana Mohd. Amir Rashadi vs. State of U.P. and Another (supra)***, is concerned, it is not helpful to this applicant because this court come to the conclusion to find out the role of this applicant that he is wire puller of the said murder. He hatched that conspiracy and there is material against him. The possibility of fleeing away of this applicant also cannot be ruled out. Therefore, the applicant is not entitled for bail on the principle of bail is rule and jail is exception. Therefore, the application deserves to be rejected. It is accordingly rejected.

(SANJAY A. DESHMUKH, J.)

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