



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 BAIL APPLICATION NO. 2371 OF 2023

Shankar Vyankat Warwate

..APPLICANT

-VERSUS-

The State of Maharashtra and another

..RESPONDENTS

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Advocate for Applicant: Mr. Jadhav N. L.

APP for Respondent/State: Mr. Satish A. Gaikwad.

Advocate for assist to P.P.: Mr. S. G. Kawade.

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 19th JANUARY, 2024.

PER COURT :-

. The applicant is seeking bail in connection with crime No.0329 of 2023 registered with Killari Police Station, Tq. Ausa, Dist. Latur, for the offence punishable under section 307 of the Indian Penal Code.

2. The report is lodged by Sumit Hanmant Kadam, the brother of injured alleging that his brother Rohit went to the agricultural land on 23.11.2023 at about 10 p.m. for rotavating the agricultural land. At about 11.30 p.m., he made a phone call to the informant that the cultivation of the land is over and he is going to sleep in the said land. He directed informant to come with sprinklers pipes in the morning.

Informant further averred that on 24.11.2023, at about 7 a.m., Rohit made phone call to him and informed him to come immediately as he has been beaten and the phone call was cut-off. Therefore, informant immediately rushed to the said land. He noticed that cot had blood stains. His brother Rohit was lying there in the pool of blood with his head bleeding heavily. There were serious injuries to his head and forehead. He then sat there and took his head on his lap. That time, Rohit opened his eye. Informant asked him as to how it happened, he told that in between 1 to 2 p.m., when he was sleeping, the applicant came there and suddenly assaulted by an axe with intention to kill him and ran away. Informant immediately made phone call to Atul Venkatrao Kadam about that incident and told him to come with vehicle there. Thereafter, Atul came there and Rohit was taken immediately to Sahyadri Hospital. He was unconscious, therefore, his statement was not recorded. Report was lodged on 27.11.2023.

3. The learned advocate for the applicant submitted that the applicant is falsely implicated in this crime. Though the incident took place in the night time and the injured Rohit made phone call to his brother in the morning, he did not lodge report promptly. Father of this applicant also submitted application to the Superintendent of Police, Latur to collect the call details and mobile locations of the applicant, informant, injured and tractor driver, who drove that tractor

for rotavating the agricultural land of injured Rohit Kadam. The learned advocate for the applicant pointed out that the applicant has been falsely implicated in the crime. Delay caused for lodging the report is prima-facie reasonably doubtful. He prayed for allowing the application.

4. Heard learned APP for the State and the learned advocate assisting to the prosecution. The learned APP for the State pointed out the statement of injured Rohit, in which he has stated that the applicant assaulted him. He further pointed out the injury certificate of Rohit, in which it is mentioned that there is fracture to the temporo-parietal bone and injuries are caused by sharp and hard object. Injury nos.1 and 3 are of grievous nature. He submitted that investigation is in progress and is not yet completed and an axe is not seized. For proper investigation, Criminal Writ Petition no.102 of 2024 is filed. It is lastly prayed that the applicant is involved in the serious crime, therefore, the application deserves to be rejected.

5. Perused the papers of investigation. Practical investigation is over. It is pointed out by the learned advocate assisting to the prosecution from the say submitted for not granting bail before the trial Court that the applicant has not co-operated for tracing out an axe used for commission of crime. The MLC was forwarded by Latur Police Station to Killari Police Station after the incident immediately.

6. The report itself clarifies that there was opportunity for injured Rohit to inform the informant or other relatives that he was assaulted by the applicant in that night itself as he was having mobile handset with him. Secondly, when Rohit told the informant in the morning that the applicant assaulted him, thereafter also immediately report was not lodged against the applicant. There is no explanation as to why delay was caused for lodging the report. Merely because in the say filed by the prosecution it is contended that the applicant is not cooperating for producing an axe used in the crime, on that basis prima-facie inference cannot be drawn that he is involved in the said crime. The delay caused for lodging the report is prima-facie a seriously doubtful circumstance. The statement of Rohit is recorded after he regained consciousness after lodging of report. The possibility of false implication of this applicant cannot be ruled out due to earlier enmity. Earlier enmity is double edged weapon. The applicant has roots in the society, he will not flee away from the trial. There are no criminal antecedents. Practical investigation is over. In such situation, keeping the applicant behind the bar is not justifiable in view of the principle that bail is rule and jail is exception. However, considering the fact that the applicant and injured as well as informant are resident of one and the same village, it would be proper to impose some stringent conditions. Hence, the following order.

ORDER

- I. Application is allowed.
- II. The applicant in connection with crime No.0329 of 2023 registered with Killari Police Station, Tq. Ausa, Dist. Latur, for the offence punishable under section 307 of the Indian Penal Code, be released on bail on furnishing personal bond of Rs.50,000/- with one surety of the like amount, on following conditions:-
 - a) The applicant shall not pressurize the prosecution witnesses and shall not tamper with the prosecution evidence, in any manner.
 - b) The applicant shall not enter into village Shivnilakh and entire Ausa Tahsil, Dist. Latur till the conclusion of the trial except the dates when his presence is required in Ausa Court.
 - c) It is clarified that the observations made in this order are prima-facie in nature and the trial Court shall not get influenced by the same while concluding the trial.

(SANJAY A. DESHMUKH, J.)