



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Application (BA) No. 130 of 2024

Shubham Chandrabhan Sakharkar ..vs.. State of Maharashtra, through P.S.O., Ram Nagar PS.,
Chandrapur, Dist. Chandrapur]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. P. Bhandarkar, Advocate for the applicant
Mr. Bhagwan M. Lonare, APP for the State/non-applicant

CORAM : ANIL L. PANSARE J.

DATED : 08-04-2024

The applicant has applied for his release on bail in terms of Section 439 of the Code of Criminal Procedure, 1973. The applicant has been arrested on 11-9-2021 in Crime No. 900/2021 registered with Police Station, Ram Nagar, Chandrapur for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code (IPC).

2. Briefly stated, the case of the prosecution is that three accused, namely, Shubham (present applicant), Sangam (co-accused who has been released on bail by this Court on 5-4-2023) and Anand have on or about 9-9-2021, committed murder of one Sankesh. The spot of crime is behind Ambedkar College, forest area, Chandrapur.

3. Having heard both sides, it appears that the case of prosecution is based on circumstantial evidence. The theory of last seen together has been put forth by the prosecution. The Sessions Court has given following reasons for rejecting the application.

“07] Heard both sides at length, perused the papers filed along with the application and the charge-sheet. The previous bail applications of the applicant/accused are rejected. I would mention some important facts of the case. The accused has destroyed the evidence by burning his clothes used during the offence at Sindewahi. He has purchased new T-shirt at Sindewahi. There is CCTV Footage while purchasing T-shirt. There were previous disputes and quarrels between the present applicant/accused Shubham Sakharkar and the deceased Sankesh Somatkar. The applicant/accused and the other accused Sangam had kidnapped the friend of the deceased Swapnil Buradkar before one month of the murder of the deceased and assaulted him and pressurized him to call the deceased at Padoli. The applicant/accused had made the deceased to drink liquor and kept him under the influence of liquor till they got an opportunity to commit his murder. The present accused is alleged to have assaulted the deceased with knife and the other accused had caught the deceased. There is prima facie evidence against the applicant/accused. The applicant/accused had a definite motive to kill the deceased because of his love affair with his sister. There are criminal antecedents against the applicant/present accused. The Hon’ble Supreme Court has laid down in the case of **Ansar Ahmad Vs State of U.P. in Cri. Appeal No.1168/2023 and 1169/2023** that, “it may be true that an accused cannot be permitted to be languished in jail indefinitely, but the courts while considering bail application need to wait for the appropriate stage where such a relief can be granted without any adverse impact on the prosecution case. That stage is yet to reach in the present trial as some of the crucial eye witnesses are yet to depose”. These observations are applicable to the present case. The accused is in a position to influence the witnesses. There is possibility that he may tamper the prosecution evidence. The other accused Sangam Sagore has again committed some offences when he is released on bail by the Hon’ble High Court. The

learned APP has already filed an application to cancel his bail. The present applicant/accused cannot be released on bail on the ground of parity with other accused. So, there is possibility that the present applicant/accused may also commit some offence. The charge is already framed against the accused. The trial is likely to begin in the near future. So, I reject the bail application.”

4. The Sessions Court has observed that there were previous disputes and quarrels between the present applicant and deceased Sankesh Somatkar. The applicant and co-accused Sangam had kidnapped the friend of the deceased one month prior to murder of Sankesh. They had pressurized Swapnil to call the deceased at Padoli. The applicant had met the deceased Sankesh to drink liquor and kept him under the influence of liquor until the applicant and co-accused got an opportunity to commit his murder.

5. As regards the role of applicant, the Sessions Court has observed that the applicant has allegedly assaulted Sankesh with knife and the co-accused had caught deceased. The motive behind the crime is, deceased was in love affair with the applicant's sister.

6. The aforesaid observations have been made by the Sessions Court on the basis of statements of witnesses of which none has really witnessed the crime.

7. The statement of Sankesh's mother has been recorded on 5-10-2021. She states that there were whispers in the town of the relationship between Sankesh and applicant's sister. She came to know that twenty days prior to the incident, Sankesh was assaulted

by the applicant. She enquired with Sankesh but he told that nothing of that sort had occurred. On 8-9-2021, Sankesh left the house but did not return. On 11-9-2021, she came to know that the applicant and his friends have murdered her son.

8. The statement of applicant's sister has been also recorded. She admits that she was in relationship with the deceased Sankesh. She states that he was addicted to alcohol. She made an attempt to pursue de-addiction but he was not ready to listen. Her parents were not happy with the relationship and, therefore, scolded her and asked her to focus on education. In July, 2021, she was sent to her maternal uncle at Chandrapur. On 11-9-2021, she came to know from her maternal aunt that Sankesh had been murdered by her brother and his friends.

9. As could be seen, the witnesses have gathered information from the third party. The statements are hearsay and will be challenging for the prosecution to rely upon the statements.

10. Learned Additional Public Prosecutor (APP) could not really show statement of any witness to establish the role assigned by the Sessions Court to the applicant. Learned APP, however, submits that the weapon of crime i.e. knife has been recovered at his instance.

11. On this point, learned counsel for the applicant contends, by referring to postmortem report, that the deceased sustained many stab injuries. The cause of

death is shock of hemorrhage due to injury to vital organs due to stab wounds. Knife has been allegedly recovered on the next day of incident i.e. on 12-9-2021. Except for rust stains, no other stains including blood stains were found on the knife. He accordingly submits and rightly so that unless the discovered weapon i.e. knife is connected with the crime, the conviction cannot be based on such discovery.

12. Learned APP could not explain as to how knife said to be used to inflict multiple stab injuries carries no blood stain. Thus, the recovery of knife may not be sufficient to continue further incarceration of the applicant, who is behind the bar for last more than two years.

13. Learned APP then states that there are two criminal antecedents against the applicant one is Crime No. 318/2020 for the offences punishable under Sections 392 and 427 read with Section 34 of the IPC and another is Crime No. 65/2021 for the offences punishable under Sections 325, 323 and 504 read with Section 34 of the IPC.

14. To my mind, the antecedents could have been considered, had there been reasonable evidence against the applicant to show his involvement in the crime. The evidence which the prosecution intends to rely, *prima facie*, appears to be weak and on such evidence, merely on the basis of antecedents, the personal liberty of a person ought not to be compromised.

15. In view of above and considering nature of the evidence against the applicant coupled with the presumption that the person accused of commission of a crime is considered innocent until proven guilty, in my considered view, no fruitful purpose will be served by keeping the applicant behind bars. The interest of the prosecution can be protected by putting the applicant to appropriate terms.

16. The observations made in this order are *prima facie* in nature and are made for deciding the present application only. The learned trial Judge shall not get influenced with the above observations.

17. Resultantly, the following order is passed.

ORDER

(i) The application is allowed.

(ii) Applicant – Shubham Chandrabhan Sakharkar, be released on bail, in Crime No.900/2021 registered with Police Station, Ram Nagar, Chandrapur for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, on he furnishing P.R. Bond in the sum of ₹ 50,000/- with one or two sureties in the like amount.

(iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the same till the final disposal of the case.

(iv) The applicant shall attend the court regularly and cooperate to complete the trial expeditiously. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(v) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(vi) The applicant shall maintain law and order.

(vii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms.

(Anil L. Pansare, J.)