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

BAIL APPLICATION NO. 1796 OF 2024

Shailesh Ashok Ahire

versus

The State of Maharashtra

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Mr. S.E. Shekade, Advocate for applicant.

Mr. V.S. Badakh, APP for respondent.

CORAM :S.G. CHAPALGAONKAR, J.

DATE : 8th JANUARY, 2025.

P.C. :-

1. The applicant seeks regular bail in connection with Crime No. 22 of 2023 registered with Police Station, Kasoda, Taluka Erandol, District Jalgaon for the offences punishable under Sections 302, 120B r/w 34 of IPC and under Section 4/25 of the Arms Act.

2. The investigation was set in motion on the basis of information given by one Kiran Subhash Patil alleging that accused Nilesh Desale had a dispute with deceased Sachin Patil. Nilesh Desale threatened to kill Sachin Patil. On 19.3.2023, while Sachin was proceeding on his motorcycle, he was attacked by unknown persons. Consequently, he suffered fatal injuries. Informant states that accused Nilesh Desale hatched a conspiracy to kill Sachin Patil through contract killers. The investigation progressed. The statement of witnesses were recorded and charge sheet was filed against accused persons. The applicant was not named in the first charge sheet, however, in additional

charge sheet dated 13.12.2023, he has been named as accused No.8.

3. On 16.9.2023, the applicant has been arrested. He was produced before the Magistrate on 17.3.2024. He was subjected to identification parade and alleged to have been identified by witnesses – Vinod Vishwas Patil, Chetan Subhash Patil and Avinash Suryakant Naik.

4. Applicant approached Sessions Court vide application below Exh.29 in Sessions Case No. 92 of 2023 and sought regular bail. However, his prayer has been declined by the Sessions Court vide order dated 19.7.2024. Hence, this application.

5. Mr. Shekade, learned advocate for the applicant submits that the applicant has been falsely implicated in aforesaid crime. He has been arrested after more than six months of the registration of offence. Thereafter, he was subjected to Test Identification Parade and alleged to have been identified by 3 witnesses. He would submit that prior to conduct of identification parade, he was exposed to various places. His identification in T.I. Parade cannot be the sole basis for implicating him in the offence. He would submit that even otherwise, no specific role has been attributed against applicant. Co-accused persons have been enlarged on bail. Further detention of the applicant would not be necessary.

6. Per contra, Mr. Badakh, learned APP opposes the application contending that three eye witnesses of the incident have identified the applicant. As such, there is sufficient material against the applicant as regards his involvement in the offence.

7. Having considered the submissions advanced, apparently, the FIR or statement of eye-witnesses do not disclose the name of applicant. Statement of so called eye-witness states that 4 to 5 unknown persons alighted from Bolero Jeep owned by Nilesh Desale and assaulted deceased. Statements of witnesses depict that description of the assailant is nowhere mentioned. There is nothing in those statements by which identification of the assailants can be gathered. All statements of eye witnesses who allegedly identified applicant during T.I. Parade are stereo type in nature and recorded after 11 days of incident. Whether these witnesses are really eye-witnesses or not would be a question of trial.

8. Except alleged identification of the applicant by aforesaid witnesses there is no evidence to connect the applicant with commission of offence. No corroborative evidence could be collected during investigation to corroborate participation of applicant in subject crime. No specific role of the applicant is discernible from the contents of additional charge sheet. The applicant is arrested after six months of the offence i.e. on 16.9.2023. Even then, Test Identification Parade is not immediately carried. The applicant was subjected to Test identification parade on 1.12.2023 i.e. after 75 days of the arrest. Delayed T.I. Parade itself cannot form sole basis to bring home involvement of applicant in commission of offence. The applicant is behind bars for more than 15 months. The trial is at nascent stage. No criminal antecedents against the applicant are brought to the notice of this court. Hence, a case is made out for grant of bail. Consequently, following order :-

:- ORDER :-

- (i) The application is allowed.
- (ii) The applicant – Shailesh Ashok Ahire, be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- with one solvent surety of the like amount, in crime No. 22 of 2023 registered with Police Station, Kasoda, Taluka Erandol, District Jalgaon for the offences punishable under Sections 302, 120B r/w 34 of IPC and under Section 4/25 of the Arms Act on the following conditions :-

[a] The applicant shall not tamper with the prosecution evidence.

[b] The applicant shall attend each and every date of trial before the Sessions Court.

[c] He shall attend cooperate for early disposal of the sessions case.

[d] It is made clear that the observations made herein above are on prima facie consideration of the material on record and only for the purpose of deciding this application.

[e] The application stands disposed of.

[S.G. CHAPALGAONKAR, J]

grt/-