



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.2346 OF 2024

Ajay S/o. Subhash Gadekar,
Age : 32 years, Occu. : Labour,
R/o. Laxmi Nagar, Paithan,
Tq. Paithan, Dist. Aurnagabad.

... Applicant.

Versus

1. The State of Maharashtra,
Through Officer in Charge,
Police Station Paithan,
Dist. Aurangabad.

2. The Superintendent of Police,
Aurangabad, Dist. Aurangabad.

... Respondents.

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Mr. Sanket S. Shinde, Advocate for Applicant
Mr. V. M. Chate, APP for Respondents - State

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 12 FEBRUARY, 2025

PRONOUNCED ON : 13 FEBRUARY, 2025

ORDER :

1. This is a regular bail application on account of arrest of applicant in Crime No.0050 of 2024 registered at Paithan Police Station, Dist. Aurangabad for offence punishable under section 302 of Indian Penal Code.

2. Pointing to the date of arrest as 22.02.2024 and that FIR is of 21.02.2024, it is submitted that, there is false implication.

That, there is no incriminating material. That, case is based on circumstantial evidence. That, there are allegations that deceased was in the company of applicant, however, learned counsel pointed out that, there is huge gap between last seen together and deceased found dead. That, there are allegations that there were quarrel on account of consumption of liquor, but nobody has seen actual occurrence much less assault. Learned counsel pointed out that, there is statement of a neighbour, but he had seen the quarrel in the afternoon and deceased was found dead in the afternoon of next day. Even his statement is not recorded promptly. That, charge sheet is filed in May 2024 itself. That, there is no indication of matter going for trial and for above reasons, when nothing is shown to be recovered at the instance of applicant, learned counsel prays for grant of regular bail.

3. While opposing the above application, learned APP pointed out that, applicant is found to be involved in committing murder. That, he and deceased were seen together by a witness while they were quarreling. That, applicant was in the company of deceased. That, death is due to head injury. That, blood stained clothes of applicant were seized and as such according to learned APP, there are strong incriminating circumstances pointing to his involvement and learned APP apprehends possibility of misuse of

liberty if granted i.e. for tampering with the witnesses. On all above counts, learned APP seeks rejection.

4. Perused the FIR and papers placed before this court. Report dated 21.02.2024 at the instance of Dnyaneshwar Thorat, who seems to be brother-in-law of father of deceased and he has reported that son of his brother-in-law Eknath, namely Krishna lived alone. On 21.02.2024, around 12:30 p.m., he received phone call from Faruq Shaikh about Krushna lying motionless in pool of blood. Therefore, when he went there, informant claims about hearing from his brother-in-law that on 20.02.2024 Krushna having found in drunken condition was asked to go and sleep in the house and he again went to see his son in the evening at 6:00 p.m., but his son was not seen in the house of which door was half open and subsequently deceased was found dead. Resultantly, on above information report seems to have been lodged against unknown person.

5. PM report shows that deceased died due to head injury. Spot seems to be house of deceased from where there is said to be seizure of shovel which was lying there. Admittedly, there is no direct evidence. Statement of father of deceased dated 22.02.2024 shows that he had met his son at 4:00 p.m. in inebriated condition

and had suggested him to go to his house. He claims that again he went in evening at 6:00 p.m., but found house door half opened and so peeped inside, but his son was not seen and there being dark in the following room, he did not enter and return from there. Therefore, statement of father shows that he had met his son at around 4:00 p.m., but in his visit at 6 p.m. he did not find in his house. Neighbour Bhagwan, who is said to be a witness on the point of last seen together also claims that, on 20.02.2024, between 4:30 to 5:00 p.m. he heard shouts from the house of deceased and so he came out and claims to have seen deceased Krushna and present applicant both quarreling in drunken condition. However, as it was there routine affair, this witness claims that he did not pay heed and went back to his house. On next morning, at 12:00 noon, he has learnt that someone had committed murder of Krushna.

6. Therefore, as pointed out, *prima facie* though there is witness seeing deceased and accused together and quarreling, but around 4:30 to 5:00 p.m. on 20.02.2024 and deceased is found dead around 12:00 noon i.e. roughly after gap of 19 hours. Medical Officer computed time since death to be 24 to 48 hours and accordingly conveyed to Investigating Officer. Recovery of allegedly used shovel is said to be already done. Learned APP pointed out that, blood stained clothes of accused are seized.

Applicant is shown to be arrested on 22.02.2024 at 01:37 hours. However, blood stained clothes are shown to be discovered at his instance under memorandum of disclosure dated 23.02.2024.

7. Taking above material into consideration and case being based on circumstantial evidence and applicant to be behind bars since last one year, charge-sheet being filed in May 2024 and there being no plausible explanation for further continued custody, applicant succeeds. Hence, the following order is passed :-

ORDER

- (i) Application is allowed.
- (ii) Applicant Ajay S/o. Subhash Gadekar be released on bail in connection with Crime No.0050 of 2024 registered with Paithan Police Station, District Aurangabad on executing P.B. of Rs.15,000/- with one surety in the like amount.
- (iii) Applicant shall not tamper prosecution evidence.
- (iv) The applicant shall attend each and every effective date before the trial court.

(ABHAY S. WAGHWASE, J.)