

VS.

Mr. Manoj Mohite, Senior Advocate, a/w. Mr. Mayur Loddha i/b. Mr. Vaibhav V. Ugle for applicant.

Mr. A. A. Naik, APP for respondent-State.

CORAM : MANISH PITALE, J.

DATE : 27th JANUARY, 2025

P.C. :

Heard Mr. Mohite, learned senior counsel appearing for the applicant and Mr. Naik, learned APP for the respondent-State.

2. The applicant herein is seeking bail as he was arrested on 27.01.2024 in connection with FIR No.0084 of 2024 dated 27.01.2024 registered at Wakad Police Station, District Pimpri-Chinchwad, for offences under Sections 143, 145, 148, 149, 201, 302 and 364 of the Indian Penal Code, 1860.

3. The applicant is one of the nine accused persons in the present case. One of the co-accused persons i.e. one Smita Tushar Hande was granted anticipatory bail by this Court by order dated 24.06.2024 passed in Anticipatory Bail Application No.1630 of 2024. An anticipatory bail application filed by the husband of the said co-accused person i.e. one Tushar Maruti Hande, was dismissed by this Court by an order dated 29.07.2024 passed in Anticipatory Bail Application No.1862 of 2024. The said co-accused person i.e. Tushar Hande is still absconding, while the other co-accused persons were arrested.

4. In brief, the incident in the present case is that the accused persons, in connivance with each other, caused the death of the victim i.e. the husband of the first informant. It is alleged that being a painter by profession, there was certain amount to be recovered from him by the said co-accused person Smita Tushar Hande, in the context of some civil works concerning an apartment. It is alleged that on the date and time of the incident, when the victim was in the company of a friend Santoshkumar Bharti, he was taken aside, abducted from the spot of the incident and then taken to a shed, where he was allegedly beaten up. Subsequently, two of the co-accused persons dropped the victim to a hospital and he eventually succumbed to injuries.

5. The learned senior counsel appearing for the applicant submitted that even if the material on record with the charge-sheet is to be considered, it can be said that the applicant has a strong *prima facie* case in his favour, for the reason that his presence on the date and time of the incident, is rendered doubtful. By referring to the statements of some witnesses and also the fact that the applicant was not identified in the Test Identification Parade (TIP) by the aforesaid friend of the victim namely Santoshkumar Bharti, it can be said that the prosecution case is not supported by the material on record. It is submitted that the applicant has already suffered incarceration for a period of one year and therefore, this Court may consider enlarging him on bail.

6. The learned APP, on the other hand, relied upon the very same material placed on record alongwith the charge-sheet, to contend that at least two witnesses have named the applicant as the person present at the date and time of the incident and therefore, no indulgence may be shown to the applicant.

7. This Court has considered the material on record. It is relevant to note that the aforesaid witness i.e. Santoshkumar Bharti, while describing first part of the incident, wherein the victim was abducted by individuals, stated that unknown persons came in two cars at the time when the victim was confronted by the co-accused Smita Tushar Hande, as regards the amount allegedly due from the victim. It is stated that the unknown persons took the victim away in the aforesaid cars. The said witness specifically stated that he would be able to identify such unknown individuals.

8. It is to be noted that when the said witness Santoshkumar Bharti took part in the TIP, he was unable to identify the applicant as one of the persons involved in the incident. This does create a doubt about the presence of the applicant at the date and time of the incident.

9. This leaves the statements of two witnesses, one of whom has specifically taken full name of the applicant, as one of the persons present near the shed, where the victim was taken and allegedly beaten up. The other witness has simply taken the name "Kunal" as the person, who got down from the car near the shed, when the victim was brought at the said place. It is relevant to note that while Santoshkumar Bharti i.e. the person who allegedly saw the first part of the incident, wherein the victim was taken away in the two cars by the accused persons, failed to identify the applicant as one of the persons present at that point in time, the other witness Vasudev Mahadev Patil stated that the applicant got down from the car in which the victim was brought to the shed, where he was allegedly beaten up. *Prima facie*, there appears to be discrepancy in the statements of the two witnesses. As regards the statement of other

witness Nitin Shivaji Bhosale, who has taken full name of the applicant as one of the persons present near the shed, where the victim was allegedly beaten up, he claims to be a person knowing both, the applicant as well as the other co-accused person whom he had named.

10. But, it is relevant to note that the statements of the aforesaid two victims Vasudev Mahadev Patil and Nitin Shivaji Bhosale were recorded on 04.02.2024 i.e. a week after the applicant was already arrested on 27.01.2024. It is relevant that the charge-sheet does not divulge any material available with the investigating authority prior to recording of the aforementioned statements of two witnesses on 04.02.2024, who specifically took the name of the applicant and yet, the applicant was arrested on 27.01.2024 itself.

11. There is substance in the contention raised on behalf of the applicant that in such a situation, when the applicant was arrested, there was hardly any material with the investigating authority against the applicant. In this context, the failure on the part of Santoshkumar Bharti in identifying the applicant in the TIP, assumes significance and it is a factor that ought to inure to the benefit of the applicant.

12. This Court is convinced that the applicant has made out a *prima facie* case in his favour to claim that he is sought to be falsely implicated in the present case. Therefore, the applicant has made out a case for being released on bail.

13. In view of the above, the application is allowed in the following terms:

- (i) The applicant shall be released on bail in connection with FIR No.0084 of 2024 dated 27.01.2024 registered at Wakad Police Station, District Pimpri-Chinchwad, on furnishing PR Bond of ₹ 25,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.
- (ii) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of his active mobile number and residential address to the trial Court and update about the same, if there is any change.
- (iii) The applicant shall co-operate with the trial Court in completing the proceedings expeditiously and attend the proceedings before the trial Court on each and every date, unless specifically exempted, for the reasons to be recorded in writing.
- (iv) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not undertake any action that may influence the informant, witnesses and other persons concerned with the case.

14. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions is violated.

15. It is also clarified that the observations made in this order are limited to the disposal of the present bail application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

16. The bail application stands disposed of accordingly.

(MANISH PITALE, J)