

(2023) 08 BOM CK 0007
In the Bombay High Court
Case No : Bail Application No.859 Of 2023

Kisan Zungraji Ufade

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 02-08-2023

Acts Referred:

Criminal Procedure Code, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 201, 302
Arms Act, 1959 — Section 4(25)
Bombay Police Act, 1951 — Section 135, 37(1)

Citation : (2023) 08 BOM CK 0007

Hon'ble Judges : Amit Borkar, J

Bench : Single Bench

Advocate : Sana Raees Khan, Aditya Parmar, Veera Shinde, Ghogari

Final Decision : Disposed Of

Judgement

Amit Borkar, J

1. This is an application under Section 439 of the Criminal Procedure Code, 1973 seeking bail in connection with C.R. No.767 of 2021 registered with Bhartiya Vidyapeeth Police Station, Pune for offence punishable under Sections 302, 201, 34 of the Indian Penal Code, 1860 and Section 4(25) of the Indian Arms Act and Sections 37(1) read with Section 135 of the Bombay Police Act.

2. The case of prosecution in short is that the informant, Prashant Kadam, Software Engineer and the deceased Sharad Aware had taken one rented office at Dhankawadi for their personal job work and they both were paying its rent Rs.16,000/- per month. The deceased used to work at E-Seva Kendra and passing loan proposals to the customers from banks as well as from credit societies. Co-accused Prakash Shinde and Hitendra Patole used to visit frequently to the office of deceased in relation to the loan proposal due to which deceased was knowing co-accused Prakash Shinde and Hitendra Patole.

3. On 19 August 2021, deceased borrowed hand loan of Rs.1 lakh from the co-accused Prakash at 10% interest. Deceased was paying interest regularly to Prakash. Since the deceased was unable to pay interest, on 28 November 2021 at about 10.10 p.m. co-accused Prakash Shinde called informant and told that mobile phone of the deceased is switched off and he should inform deceased to meet him. When the informant informed deceased about visit of Prakash, deceased intimated the informant at 10.43 p.m. that he is going to visit co-accused Prakash Shinde.

4. At about 1.21 a.m. of the next day, wife of deceased called informant and told that the deceased has not come back yet and his phone is switched off. When informant reached the house of deceased, two police personnel were present. They informed that the deceased is beaten. They all went to service road proceeding from Katraj to Navle Bridge. The informant and wife of deceased identified Honda Shine motorcycle bearing No.MH-12/PV-6751 lying opposite Chakradhar Enterprises as that of the deceased. From the CCTV footage shown by police, it can be seen that co-accused Prakash and one unknown person were beating the deceased. Unknown person had tied hands of deceased and co-accused Prakash was assaulting the deceased by sharp weapon and thereafter they left the place. The deceased was admitted to Sassoon Hospital, Pune, where the doctor declared him dead. Accordingly, the informant lodged first information report.

5. The applicant was arrested on 5 December, 2022. He applied before learned Sessions Judge under Section 439 of Cr.P.C. which came to be rejected by order dated 21 July 2022.

6. Learned Advocate for the applicant submitted that the prosecution case is based on circumstantial evidence. The applicant is not named in the first information report. No recovery has been effected from the applicant. Motive to kill the deceased is attributed to accused No.1. The persons seen in CCTV footage are not identified. Weapon is seized at the instance of accused No.1. The applicant has no criminal antecedents.

7. Per contra learned APP submitted that, the applicant and accused No.1 are relatives. The murder of deceased is pre-planned. The accused persons made phone calls to the wife of deceased. The assault is recorded in CCTV footage which clearly shows that the applicant caught hold of deceased and accused No.1 Prakash Bhagwat Shinde assaulted the deceased by weapon. The weapon and motorcycle used have been recovered. Initially, the applicant absconded for 8 days. The test identification parade of applicant and co-accused is yet to be carried out.

8. On perusal of the charge-sheet, it appears that the act of assault by deadly weapon is attributed to accused No.1. The motive to kill the deceased is also attributed to accused No.1 who had allegedly lent Rs.1 lakh to the deceased and there was failure

to pay the said amount. The persons in the CCTV footage are records the assault which yet to be identified. The recovery of weapon and vehicle is at the instance of accused No.1. In the absence of test identification parade, at this stage, it cannot be ascertained that the role attributed to the applicant of catching hold of deceased is substantiated. The applicant has no criminal antecedents to his discredit. Nothing remains to be seized or recovered from the applicant. Investigation is completed, charge-sheet is filed.

9. On overall consideration of aforesaid factors, the applicant has made out a prima facie case. Of course, role of the applicant needs to be decided at the time of trial. However, further detention of the applicant is not warranted. Hence, following order:

a) The application is allowed.

b) The applicant Kisan Zungraji Ufade be released on bail in connection with C.R. No.767 of 2021 registered with Bhartiya Vidyapeeth Police Station, Pune for offence punishable under Sections 302, 201, 34 of the Indian Penal Code, 1860 and Section 4(25) of the Indian Arms Act and Sections 37(1) read with Section 135 of the Bombay Police Act, on furnishing P.R. Bond in the amount of Rs.25,000/- with one or two sureties in the like amount;

b) The applicant shall mark his presence with the concerned police station on first Saturday of every month till conclusion of trial;

c) The applicant shall remain present before the Trial Court on each and every date unless specifically exempted by the Court;

d) 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 from disclosing such facts to the court;

e) The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

f) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case;

10. The bail application stands disposed of in above terms. No costs.