

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

**21 CRIMINAL APPLICATION NO. 5001 OF 2016
WITH
APPLN/5054/2016
WITH
APPLN/5372/2016**

**NIKHIL @ NITIN S/O CHAGAN PAWAR
& ORS.**

VERSUS

THE STATE OF MAHARASHTRA

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Mr. N.S.Ghanekar and Mr. A.K.Bhosale,
Advocates for Applicants.

Mrs. V.N.Patil (Jadhav), A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.

DATE : 26th SEPTEMBER, 2016

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PER COURT :

1. The applicants/accused in Crime No. 27/2016 registered at Gangapur police station, Dist. Parbhani for the offences punishable U/ss 364,302,201,120-B read with 34 of the Indian Penal Code and u/s 3/25 of the Indian Arms Act, by this application are seeking their release on bail.

2. Heard the learned counsels for the applicants. By

drawing my attention to the charge sheet, they both argued in unison that the case of the prosecution as against these accused persons is to the effect that they had destroyed evidence of commission of offence of murder of Anil Sharma knowingly and this offence alleged against the applicants is bailable in nature. Therefore, according to the learned counsel for the applicants, their further pre-trial detention is not warranted in the wake of filing of the charge sheet. The learned counsels for applicants have submitted that earlier applications filed by them were withdrawn with liberty to move subsequently after framing of the charge. Subsequently co-accused with similar role namely Mahesh Kadane and Raju Rathod are released on bail by this Court and considering this change in circumstances, applicants are pressing their applications for releasing them on bail.

3. The learned A.P.P. opposed the application by contending that the crime in question was committed by hatching the conspiracy in which Anil Sharma [since deceased] was taken to the hotel of main accused Santosh Patil More. There he was killed by Santosh Patil More by firing bullets from the revolver in his head. Thereafter, head of the dead body was severed and it was disposed of at 2 places. The revolver of the deceased was also disposed of, in which the applicant Sudam Khandagale had played major role. According to the learned A.P.P., applicant Mahesh helped co-accused Raju Raut for cutting the head of the dead body. Applicant Santosh Chavan washed the floor of the bar and lobby in order to remove the stains of blood. He further

argued that the applicant Nikhil @ Nitin was present when the evidence of the crime in question was being destroyed.

4. It is not in dispute that co-accused are subsequently released on bail by this Court. Because of this change in circumstances, applicants are justified in pressing their application for bail even though the charge is not yet framed.

5. Perusal of the charge sheet and particularly column No. 15 thereof reflects the prosecution case. Anil Sharma [since deceased] was friend of co-accused Santosh Patil More. It is the case of the prosecution that Anil Sharma had given an amount of ₹ 20 Lakh to accused Santosh Patil More for construction of house, but despite the repeated requests, he was not refunding the said amount of Anil Sharma. According to the prosecution case, apart from that, other motive for committing murder of Anil Sharma was that Anil Sharma was having illicit relation with the wife of accused Santosh Patil More. By hatching conspiracy, according to the prosecution case, Anil Sharma was brought to the hotel of co-accused Santosh Patil More by accused No. 2 Santosh Jagtap on 17/01/2016 on the pretext of celebrating birth day of Santosh Patil More. Then the accused Santosh Patil More murdered Anil Sharma by firing 3 bullets in the head of Anil Sharma. Thereafter, according to the prosecution case, co-accused Raju Raut severed head of the dead body. The applicant Mahesh Naikwadi was with co-accused Raju Raut for this act.

6. According to the prosecution case, accused No. 1 Santosh Patil More then delivered a polythene bag containing revolver of deceased Anil Sharma to the applicant Sudam Khandagale for disposing it of. Accompanied by co-accused Mahesh Naikwadi, then applicant Sudam Khandagale took that revolver and threw it in Salim Ali Lake at Aurangabad. The applicant Santosh Chavan has washed the floor of bar and lobby. When the work of destroying the evidence was going-on, the applicant Nikhil @ Nitin has also stated to be present on the spot.

7. The charge sheet reflects that co-accused Santosh Patil More is owner of hotel Nakshatra where the incident of murder of Anil Sharma took place. The present applicants are reported to be employees of co-accused Santosh Patil More. They arrived at the spot after the incident of commission of murder of Anil Sharma and then, according to the prosecution case, they did the work as attributed to them. The charge sheet does not reflect *prima facie* the complicity of the present applicants in the conspiracy to kill Anil Sharma. They stated to have destroyed the evidence of commission of offence knowing that the offence of murder of Anil Sharma was committed. The offence punishable u/s 201 of the Indian Penal Code is bailable in nature. The co-accused with similar role are already released on bail by this Court.

8. In this view of the matter, further pre-trial detention of the applicants is not warranted. Hence, the

following order.

(i) The application is allowed.

(ii) The applicants Nikhil @ Nitin s/o Chagan Pawar, Santosh s/o Bhanudas Chavan, Sudam s/o Eknath Khandagale and Mahesh @ Pappu s/o Vishnu Naikwade in Crime No. 27/2016 registered at Gangapur police station, Dist. Parbhani for the offences punishable U/ss 364,302,201,120-B read with 34 of the Indian Penal Code and u/s 3/25 of the Indian Arms Act, be released on bail on executing P.R. Bond of ₹ 20,000/- [Rupees Twenty Thousand] each and on furnishing surety in the like amount.

(iii) As a condition of this Order, the applicants shall not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or the Court.

(iv) The applicants shall not tamper the evidence of the prosecution.

(v) The applicants shall co-operate the trial Court in expeditious disposal of the trial against them.

[A.M.BADAR, J.]