

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

Criminal Application No. 5358 of 2016

District : Parbhani

Gangadhar s/o. Dnyanoba Phad,
Age : 51 years,
Occupation : Service,
R/o. Old F-13/156,
Thermal Power Station (TPS)
Colony, Parali (Vaijnath),
Taluka : Parali (Vaijnath),
District : Beed.

.. Applicant.

versus

The State of Maharashtra,
through Police Sub-Inspector,
Local Crime Branch, Parbhani.

.. Respondent.

.....

Mr. Rajendra S. Deshmukh, Advocate, for the applicant.

*Mr. S.D. Ghayal, Addl. Public Prosecutor, for the
respondent.*

.....

CORAM : A.M. BADAR, J.

DATE : 5TH OCTOBER 2016

ORAL ORDER:

The applicant / accused in Crime No. 12/2015 registered with Police Station, Pimpaldari, Taluka Gangakhed, District Parbhani, for offences punishable under Sections 302, 201, 143, 147, 148, 149, 109, 114 read with Section 34 of the Indian Penal Code, by

this application, is seeking bail after filing of the charge-sheet.

2. Heard the learned Counsel appearing for the applicant / accused. He argued that the applicant is arrested on 14.08.2015 and the charge-sheet has been filed on 06.11.2015. The learned Counsel further argued that the incident of murder of Ganesh s/o. Maroti Phad took place on 22.2.2015 in the field of the informant at village Dhebewadi, Taluka Gangakhed, District Parbhani. The learned Counsel submitted that the applicant is serving in Maharashtra State Electricity Distribution Company Ltd. and was posted at Parli-Vaijnath. At the relevant time, he was at village Bhopa for a programme of Kirtan. He is arrayed as an accused only because he is in service and prosecuting party is on inimical terms with accused persons. The learned Counsel drew my attention to the order passed by this Court in bail application of co-accused Uttam s/o. Dnyanoba Phad and Hanuman s/o. Ramdas Phad and submitted that though role of instigation was ascribed to accused Uttam Phad, who is brother of the present applicant, he has been released on bail. The applicant therefore claims parity.

3. The learned Counsel for the applicant further argued that on 26.05.2015, investigation of the crime in question was transferred to Local Crime Branch and thereafter the applicant was arrested and

subsequently statements of witnesses came to be recorded. By drawing my attention to statements of witnesses Subhash Andhale, Parmeshwar Andhale, Eknath Salgar, Ankush Phad and Yamuna Phad, the learned Counsel argued that these statements are belatedly recorded in the month of July 2015 and August 2015, whereas the incident in question took place in February 2015. This belated recording of statements of witnesses makes the case of the prosecution suspect and possibility of false implication of the applicant cannot be ruled out. The investigation is over and therefore the applicant deserves to be released on bail. It is argued that role ascribed is only assault by means of stones.

4. The learned Addl. Public Prosecutor opposed the application by contending that the offence is serious and the deceased was lastly seen in company of accused persons.

5. With the assistance of the learned Counsel appearing for parties, I have gone through the charge-sheet. Ganesh Phad died homicidal death on 22.02.2015. His dead body was found in the field of Rajabhau Phad at Dhebewadi and accordingly Rajabhau Phad lodged FIR on 23.02.2015 resulting in registration of the crime in question. Perusal of post mortem report shows that Ganesh Phad died because of cardio-respiratory failure due to hemorrhagic shock due to multiple injuries with

injury to liver, head injury, etc. Perusal of post mortem report shows that there were in all 21 ante mortem injuries including incised wound, contused lacerated wound, fracture injury, etc. These injuries prima facie shows that the dead body was literally crushed due to ante mortem injuries.

6. From the charge-sheet it appears that because of sluggish investigation, same was transferred to the Local Crime Branch of Parbhani. The charge-sheet reveals that on 23.05.2009, there were two murders. Keshav Phad and his son were murdered and Ganesh Phad (since deceased) was one of the accused in that case along with 23 other accused persons. It is case of the prosecution that accused persons in that case had collected an amount of Rs. 70,00,000/- to bribe witnesses in murder case of Keshav Phad and his son. Accused Nathrao Phad in this case is father and brother of deceased in the said case wherein there was an attempt to bribe the witnesses. This is stated to be motive for committing murder of Ganesh Phad by accused persons.

7. Perusal of the charge-sheet shows that there are several eye witnesses to the incident in question. Statements of many of them are also recorded under Section 164 of the Cr.P.C. No doubt, statement of prosecution witnesses are apparently recorded with a lot of delay i.e. in the month of July and August 2015, but the question will be

whether on this count at pre-trial stage, their evidence can be discarded. It is well settled that delay in recording of statement witnesses is a matter to be examined at the end of the trial and, that too, after considering evidence in this regard coming from the mouth of the investigation Officer as well as concerned witnesses. Perusal of statements of witnesses recorded by the investigator goes to show that almost all of them have given reason for belated recording of their statements. They have disclosed that there is reign of terror in the village of Uttam Phad as well Nathrao Phad who is Sarpanch of the village and therefore, nobody dared to speak against them. Witnesses have stated that out of fear, they have not disclosed the incident in question to anybody. The truthfulness of such reason will be considered at the time of trial and not at pre-trial stage.

8. Ramprabhu Phad is one of the witnesses in this case. On 21.02.2015, at weekly market of Gangakhed, this witness met accused persons including the present applicant. At that time, as per version of Ramprabhu Phad, co-accused Uttam Phad told him that they are going to kill Ganesh Phad. Co-accused Nathrao Phad disclosed Ramprabhu that he had collected money for selling his she-goats. Version of this witness gain corroboration from statement of ex-employee of Nathrao Phad, namely, Ankush Phad, who is also stating that Nathrao Phad had sold his

animals.

9. Statement of Satish Phad is to the effect that motive of this crime was related to other case of murder wherein amount of Rs. 70,00,000/- was collected to bribe witnesses.

10. Subhash Andhale is a star witness for the prosecution. He had seen Ganesh Phad (since deceased) in the field of Rajabhau Phad and Ganesh told him that there is meeting in respect of settlement of old case. Statement of Subhash Andhale shows that then all accused came. The present applicant was one of them. Subhash Andhale stated that co-accused Pandurang Phad addressed Ganesh Phad that your case is to be finished itself. Then co-accused Pandurang Phad gave blow of dagger in the abdomen of Ganesh Phad. Subhash Andhale disclosed that then Satish Phad also assaulted Ganesh Phad by means of dagger. Nathrao Phad also assaulted Ganesh Phad by means of axe. Avinash and Umakant assaulted Ganesh Phad by means of iron rod, whereas present applicant, whereas present along with Sayas and Pinu assaulted the deceased by means of stones. This witness has categorically disclosed reason for his late recording of statement i.e. reign of terror wielded by Uttam Phad and Nathrao Phad.

11. Similar is the version of Arjun Phad who is an eye witness to the incident in question. He has

attributed the same role to accused persons including the present applicant. Statement of his wife Yamuna was relied by the learned Counsel for the applicant but Yamuna is also stating about assault by means of stone by the present applicant to Ganesh Phad.

12. Ashroba Phad is a person who has seen accused persons returning from the spot of the incident. He has stated that he had seen blood clots on person of Pandurang Phad, Sayas Garje and Ramesh Darade.

13. Parmeshwar Andhale is a witness to post-event happenings. Eknath Salgar has not disclosed name of the present applicant as person who was present on the spot.

14. With this voluminous evidence on record of investigation, only because statements of witnesses are belatedly recorded, bail cannot be granted to the applicant because nature of crime and circumstances in which it was committed is a relevant factor for exercising such discretion, which has to be done judiciously.

15. So far as co-accused are concerned, I have perused orders of this Court while releasing them on bail. Purport of Section 109 of the IPC is not reflected from the said order. Even otherwise, case against those two accused was totally different.

Here, there is active participation in the assault by the present applicant. Prima facie it is seen that an unlawful assembly was formed with a common object to murder Ganesh Phad in a pre-planned manner and in prosecution of the common object, he was done to death.

16. Perusal of spot Panchanama also shows that by the side of dead body Ganesh Phad, stones stained with blood were found. This corroborates version of eye witnesses attributing role of assault by means of stones to the present applicant.

17. Hence, no case for bail is made out.

18. The Application is accordingly rejected.

19. Needless to mention that the observations made in this order are prima facie in nature which shall have no bearing on trial of the case.

(A.M. BADAR)
JUDGE

.....