

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

BAIL APPLICATION NO.576 OF 2019

Bhimrao s/o Maroti Pawar

Applicant

Versus

The State of Maharashtra

Respondent

Mr.K.N.Shermale, advocate for the applicant.

Mr.A.S.Shinde, APP for the Respondent.

CORAM : V.K.JADHAV, J.

DATE : 06th October, 2020.

PC :

1 By an order dated 12th September, 2020 in Bail Application No.1066 of 2018, this Court (**Coram: Sangitrao S. Patil, J.**) has granted leave to the applicant to withdraw the application with liberty to file an application for bail afresh before the trial Court in case the trial is not completed within a period of six months after framing of the Charge. Thus, by availing the said liberty, the applicant has filed an application for bail (Exhibit-22) before the Sessions Court, Sangamner and the Additional Sessions Judge, Sangamner, has rejected the said application (Exhibit-22) in Sessions Case No.25 of 2018, by an order dated 18th August, 2019.

2 The learned Counsel for the applicant submits that despite specific directions given by this Court in the order dated 12th September, 2019 in Bail Application No.1066 of 2018, granting liberty to the applicant to file an application for bail afresh if the trial is not completed within a period of six months after framing of the Charge, the trial Court has not taken any efforts to frame the Charge till this date. The learned Counsel for the applicant submits that thus, the applicant is entitled to be released on bail on this count alone.

3 The learned Counsel for the applicant submits that the prosecution case entirely rests upon the circumstantial evidence and there is no direct evidence in this case. P.S.I. Dattatraya Shamrao Jadhav had lodged complaint on behalf of the State on the basis of information received from the applicant. The learned Counsel submits that the said information is hearsay and since received from the applicant, it is not admissible in evidence. The learned Counsel for the applicant submits that there is no chain of circumstantial evidence and the circumstances brought on record are having no definite tendency to point out guilt of the applicant-accused. The learned Counsel submits that there is no evidence of last seen together and there is not a single witness stating about presence of the deceased

with the applicant in the house of the applicant, at the relevant time. The learned Counsel submits that the applicant is entitled for bail even on merits.

4 The learned A.P.P. has strongly resisted the application on the ground that by an order dated 24th September, 2020, this Court has called the status report of the said Sessions Case No.25/2018 from the trial Court. The learned A.P.P. submits that on the basis of the status report, sent by the trial Court, it appears that the trial is not delayed due to the fault of the trial Court.

5 The learned A.P.P. submits that there is a chain of circumstantial evidence against the applicant. The learned A.P.P. submits that as per the prosecution story, the incident had taken place in the house of the applicant. The applicant, co-accused Ganesh and deceased assembled in the house of the applicant to celebrate the party and during celebration, quarrel had taken place. In consequence thereof, the applicant had given blow of big stone (*dagadi pata*) on the head of the deceased and thereafter caused disappearance of evidence by burying dead body of the deceased at different place. The learned A.P.P. submits that at the instance of the present

applicant, dead body of Balu Janardhan Navale was recovered from the place where it was buried. It was specifically within the knowledge of the applicant. The *panchanama*, to that effect, came to be drawn, which is the part of the charge sheet. The learned A.P.P. submits that during the investigation, spot *panchanama* was drawn. There were blood stains in the house of the applicant along with said big stone (*dagadi pata*) and other articles. The said weapon and other articles stained with blood came to be seized from the spot.

6 The learned A.P.P. submits that at the instance of present applicant, even scooty of deceased Balu Navale was recovered by drawing *panchanama* under Section 27 of the Indian Evidence Act. The learned A.P.P. submits that the said scooty of the deceased was concealed in the forest area by the applicant and it was recovered at his instance. Furthermore, at the instance of the applicant, his blood stained clothes and other articles came to be seized by drawing *panchanama* under Section 27 of the Indian Evidence Act. The learned A.P.P. submits that during the investigation, the police statement of wife of deceased, namely Lila, was recorded. It appears from her statement that deceased had given huge amount to the present applicant for construction of his house and had also given huge

amount to co-accused Ganesh for his marriage and also for purchasing land. The learned A.P.P. submits that there is motive for the applicant and said co-accused Ganesh to commit murder of deceased Balu. *Prima facie*, there is evidence of homicidal death. The applicant is not entitled to be released on bail.

7 I have carefully gone through the status report submitted by the Additional Sessions Judge, Sangamner. On perusal of the same, it appears that the learned Judge was transferred to Sangamner in June 2019 as Assistant Sessions Judge and he was not entrusted with the powers of the Additional Sessions Judge. By letter dated 29th November, 2019, he was invested with the powers of the Additional Sessions Judge. Thereafter he has fixed all the 24 under-trial cases, transferred to him, on various dates for taking up steps from January 2020 onwards. However, in most of the cases, including present Sessions Case No.25/2018, the jail authorities have not produced the accused and as such, the Charge could not be framed. It further appears that due to pandemic Covid-19, physical working of the trial Courts is affected across the State. It does appear that the trial Court is not at fault and since the charge is not yet framed, the applicant is not at liberty to file an application for bail afresh on the ground that the trial is not completed within

six months after framing of the Charge.

8 Though the prosecution case entirely rests upon the circumstantial evidence and the First Information Report is lodged on hearsay information, however, *prima facie*, there is a chain of circumstantial evidence. *Prima facie*, there is evidence that the incident had taken place in the house of the applicant. During the course of investigation, while drawing the spot *panchanama*, not only blood stains in the house and also on various other articles were noted, the weapon – big stone (*dagadi pata*), having blood stains, came to be seized from the spot of incident.

9 On perusal of the *post mortem* report, particularly, Column No.17, it appears that the deceased had massive crushing injury on the head and face. The concerned Medical Officer, who has conducted the *post mortem* examination, during internal examination, has observed that the brain had liquefied and completely distorted in structure. There was a fracture of skull wall and facial bone. The cause of death is, “crushing head injury (massive)”.

10 Apart from this, at the instance of the applicant, dead body of the deceased was recovered from the place where the dead body was buried by the applicant and co-accused Ganesh, after commission of murder. It further appears that after the said incident, even the applicant has caused damage to the vehicle - scooty belonging to the deceased and concealed it in the forest area. The said scooty came to be recovered at the instance of the present applicant by drawing the memorandum and recovery *panchanama* under Section 27 of the Evidence Act. In addition to this, the blood stained clothes and other articles of the applicant came to be seized at his instance by drawing *panchanama* under Section 27 of the Evidence Act. Thus, there is a strong *prima facie* case against the applicant in the form of chain of circumstantial evidence.

11 Considering the entire aspects of the case, I am not inclined to release the applicant on bail.

12 Hence, the following order:

(i) Bail Application is hereby rejected.

(V.K.JADHAV)
JUDGE