

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

932 BAIL APPLICATION NO.1095 OF 2020

ANKUSH @ ASHOK S/O. PRALHAD GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Rathi Swapnil S.
APP for Respondent : Mrs. D. S. Jape

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CORAM : V.K. JADHAV, J.
Dated: October 07, 2020

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PER COURT :-

1. The applicant is seeking bail in connection with crime No.16 of 2020 registered with Sengon police station, District Hingoli for the offences punishable under Sections 302, 201 r/w 34 of IPC. His application bearing Cri. M.A. No. 234 of 2020 with similar prayer came to be rejected by the learned I/c Additional Sessions Judge-1, Hingoli, vide order dated 04.09.2020.

2. Learned counsel for the applicant submits that the prosecution case rests upon circumstantial evidence and there is no direct evidence in this case. Learned counsel submits that so far as two co-accused named in the FIR are concerned, co-accused Namdeo s/o Yadav

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Gaikwad came to be released on bail by this Court whereas, the Investigating Officer has submitted report under Section 169 of Cr.P.C. against co-accused Prakash Baliram Lekule. Learned counsel submits that there is no motive against the present applicant for commission of the crime. Learned counsel submits that there are only two statements recorded during the course of investigation and those are of one Pandurang Hanvate and Ramrao Pawar, respectively. Learned counsel submits that their statements are vague and hardly relevant so far as alleged commission of crime is concerned. Learned counsel submits that there is a recovery of the stone allegedly at the instance of the applicant, however, said recovery is pertaining to the stone which was lying near the place of incident. Learned counsel submits that the Investigating Officer could have recovered that stone on his visit to the spot while drawing spot panchnama, but with some ulterior motive, panchnama under section 27 of the Evidence Act has been drawn against the applicant. The applicant

is available for trial. Learned counsel submits that the applicant may be released on bail.

3. Learned A.P.P. has strongly resisted the application on the ground that though prosecution case rests upon circumstantial evidence, however, there is motive against the applicant and, further at his instance, the weapon stone used in commission of the crime has been recovered by drawing panchnama under section 27 of the Evidence Act. Learned APP submits that as per the postmortem report the cause of death is multiple injuries on head. Learned APP submits that *prima facie* there is evidence about homicidal death. The applicant may not be released on bail.

4. On going through the allegations made in the complaint and on perusal of the charge-sheet, it appears that the complaint came to be lodged against the unknown persons only with the allegations that deceased used to consume liquor in the company of co-accused Namdeo and co-accused Prakash. By order dated 4.8.2020 in Bail Application No.592 of 2020, this

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Court has released the applicant therein, namely, Namdeo s/o Yadav Gaikwad on bail. It further appears that the Investigating Officer has submitted the report under Section 169 of Cr.P.C. against co-accused Prakash. Even though there are two statements as referred by the learned counsel for the applicant, however, prima facie, I do not find it as incriminating evidence against the applicant. So far as recovery of the stone is concerned, though it was lying near the spot allegedly thrown in the bushes by the present applicant, however, it could have been recovered while drawing the spot panchnama or even after search of the spot by the Investigating officer. Thus, considering the entire aspect of the case and since allegations about motive has been made only against Namdeo and it has been alleged that the present applicant was helping co-accused Namdeo, I am inclined to release the applicant on bail. Hence, following order :-

O R D E R

I. Application is hereby allowed.

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- II. The applicant ANKUSH @ ASHOK S/O. PRALHAD GAIKWAD in connection with crime No.16 of 2020 registered with Sengaon police station, Sengaon, Tq. Sengaon, District Hingoli for the offences punishable under Sections 302, 201 r/w 34 of IPC, be released on bail on furnishing personal bond of Rs.15,000/- (Rs. Fifteen Thousand) with one surety of the like amount on following conditions:-
- a) The applicant shall not tamper with the prosecution evidence in any manner.
- III. Application is disposed off.

(V.K. JADHAV, J.)

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