

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

925 BAIL APPLICATION NO.1163 OF 2020

**BHAURAO S/O. GYANOBA GHATOL
VERSUS
THE STATE OF MAHARASHTRA**

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Mr. N.S.Ghanekar, Advocate for Applicant.
Smt. Vaishali S.Chaudhary, A.P.P. for State.

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**CORAM : V.L.ACHLIYA, J.
DATE : 03/11/2020**

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ORAL ORDER :

1. The applicant has moved this application u/s 439 of Cr.P.C. seeking release on regular bail for the reasons set out in detail in the application.

2. Heard learned counsel for applicant, learned A.P.P. for State and counsel representing the intervener/informant. Perused charge sheet and the Order dated 20/03/2019 passed by this Court in ABA No. 1586 of 2018.

3. In brief, it is the contention of learned counsel for applicant that even if the allegations made in the F.I.R. and the evidence gathered by the prosecution attributing role played by the applicant in commission of offence, it could be gathered that the fatal injury which resulted into causing death of the deceased was not attributed to the applicant. The informant

has alleged in the complaint that applicant has assaulted by means of stick over the right leg of deceased in the incident of assault. It is submitted that the applicant is more than 72 years of age with no criminal antecedents. The incident leading to commission of offence was occurred on account of dispute of drainage of rain water through the field of accused persons. The applicant is arrested on 27/09/2018. He is in jail for more than two years. The trial has not commenced. In view of pandemic due to COVID-19 the normal functioning of the Court is affected and the physical hearing of the case not likely to be taken place in near future. It is submitted that the applicant is ready to abide by the conditions that may be imposed while releasing him on bail.

4. On the other hand, learned A.P.P. and counsel representing the intervener/informant opposed the application with contention that there is strong prima facie case against the applicant. The deceased had died on account of multiple injuries sustained in the incident. The deceased was brutally beaten by the accused persons. The name of applicant is mentioned in the F.I.R. He has been specifically attributed the role by assault over the right leg of deceased. It is submitted that after the applicant is released on bail, there is every likelihood that he may endanger the life of informant and other witnesses and pressurize the prosecution witnesses.

5. I have carefully considered the submissions advanced in the light of overall facts of the case, nature of accusations made against applicant, the role attributed to the applicant in commission of offence, the circumstances in which the incident was occurred and Order dated 20/03/2019 passed in ABA No. 1586 of 2018. On due consideration of broad parameters to be borne in mind while dealing with the application for bail, the applicant deserves to be enlarged on bail.

6. As per the case of the prosecution, on 20/08/2018 in the morning there was quarrel in between informant and his father on one side and applicant and other accused on the other side. In the quarrel they abused each other and accused No. 1 sustained head injury. Both of them lodged report in respect of said incident with police station Sonkhed. Subsequent to said incident dated 20/08/2018, it is alleged that on 26/08/2018 at about 8.00 p.m. while father of informant i.e. deceased Anandrao was proceeding to answer the nature's call, the accused persons alleged to have assaulted the deceased. The accused No. 1 alleged to have assaulted deceased over head with sickle. The applicant alleged to have assaulted deceased over right leg by means of stick. Beside that, other accused too assaulted the deceased, the informant and his mother by means of fists and kicks blows. While admitted in hospital, the

deceased alleged to have succumbed to injuries. The applicant has been arrested on 27/09/2018. Since then he is in jail. The investigation is completed. Charge sheet has been filed in the month of November, 2018. The earlier bail application filed by the applicant was withdrawn with liberty to file fresh application if the trial is not concluded within one year. The order dated 20/03/2019 passed by this Court [**CORAM : V.K.JADHAV, J.**] in ABA No. 1586 of 2018 reads as under.

" 1. Learned counsel for the applicant, on instructions, seeks leave to withdraw this bail application. Learned counsel, however, submits that the applicant is 72 years of age and thus considering his age, if the trial is not concluded within certain period, liberty may be given to the applicant to file an application for bail again. Leave granted. The application is disposed of as withdrawn.

2. The applicant is 72 years of age. Thus, considering his age, if the trial is not concluded within a period of one year from today, the applicant will be at liberty to file an application for bail again."

7. Although the period of more than two years has lapsed from the date of arrest of applicant and more than one year has lapsed after withdrawal of the application, the trial has not been commenced. The applicant is more than 72 years of age. He has no criminal antecedents. The applicant appears to be an agriculturist by profession. On account of pandemic due to COVID-19, there is no possibility that trial will

be concluded within a reasonable period. Since the applicant is having deep roots in the society with no past record of commission of offence, there is no possibility of applicant being absconded or pressuring the prosecution witnesses. The apprehension expressed by learned A.P.P. that if the applicant is released on bail, he will force the informant and his family members and, therefore, stringent condition be imposed on the applicant. I am, therefore, inclined to allow the application and pass the following order.

ORDER

[i] The application is allowed.

[ii] The applicant Bhaurao s/o Gyanoba Ghatol arrested in Crime No. 131/2018 registered with Sonkhed Police Station, District Nanded for committing the offences punishable u/s 302,143,147,148,149,323,506 of Indian Penal Code be released on furnishing bail in the sum of Rs. 20,000/- [Rupees Twenty Thousand] with one surety in the like amount on the following conditions.

[a] The applicant shall not enter the local limits of Taluka Loha for the period of one year from the date of passing of this order without seeking prior permission from the Sessions Court.

[b] The applicant shall not indulge into any act

amounting to pressurizing the informant and other witnesses in the case.

[c] Pending hearing and final disposal of case, the applicant shall not indulge into commission of offence of serious in nature.

[d] The applicant shall furnish the particulars of address during the period which the applicant shall stay out side the local limits of Taluka Loha to the concerned police station.

[e] The applicant shall furnish the names, address of his three close relatives to the concerned police station.

8. The application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

KNP