

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1249 OF 2020

Sandeep s/o Asaram Gaikwad,
Age 27 years, Occupation Labourer,
R/o Kaikadi Galli, Partur,
Tq. Partur Dist. Jalna.

(At present in Aurangabad
Central Prison, Harsool)

...Applicant.

VERSUS

The State of Maharashtra,
Through the Officer Incharge,
Sillod City Police Station,
Aurangabad (Rural)
Dist. Aurangabad.

...Respondent.

Advocate for Applicant :Senior Counsel Mr. R. S.
Deshmukh instructed by
Adv Mr. D. R. Deshmukh.

APP for Respondent-State :Ms. R. P. Gour.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 24-11-2020.

ORDER :

1. Present applicant is praying bail under Section 439 of Code of Criminal Procedure. He has been arrested in connection with Crime No.94 of 2019, dated 13-05-2019, registered with Sillod City Police Station, Aurangabad (Rural) Dist. Aurangabad, for the offences

punishable under Section 302, 397, 394 read with 34 of the Indian Penal Code.

2. Heard learned Senior Counsel Mr. R. S. Deshmukh instructed by Mr. D. R. Deshmukh and learned APP Ms. R. P. Gour for respondent-State.

3. It has been vehemently submitted by learned Senior Counsel that the present applicant had approached the learned Additional Sessions Judge under Section 439 of Code of Criminal Procedure by filing Bail Application No.570 of 2020. His application came to be rejected. Though the present applicant is knocking the doors of this Court under Section 439 of Code of Criminal Procedure itself, yet he want to point out the cryptic order that has been passed in the matter. When the charge-sheet is filed the learned Judge was supposed to consider all the evidence that has been collected against the accused persons, and thereafter, come to the conclusion as to whether the further custody of the applicant would be required or not. The application has been rejected by giving reasons only in ten lines. The Hon'ble Supreme Court as well as this Court had time and again held that the bail applications are urgent matters, yet the learned Additional Sessions Judge states that it is otherwise not an

urgent matter. This approach by the learned Trial Judge was not proper.

4. The learned Senior Counsel has taken this Court through the entire charge-sheet and then submitted that the informant had given the FIR against unknown persons. It is his case that he is serving in a wine shop. It is the routine for the workers therein, including the informant, that they used to open the shop around 10.00 a.m. and close it by 10.00 p.m. He used to keep the amount at his house at the night time and on the next day morning he used to deposit the said amount in the account of the wine shop maintained with Chikhali Urban Co-Operative Bank. On 12-05-2019 after they had opened the shop at about 10.00 a.m., there was good sale of liquor on that day. When he had counted the cash at about 10.00 p.m., it was Rs.4 Lakh. He and one Bhikan Jadhav started to go to their house on motorcycle. When they reached on Bharadi Road behind one Arjun Beer Bar, one Pulsar motorcycle of black colour came from behind in high speed. The pillion rider of that motorcycle tried to snatch the bag containing cash from the hands of informant. The informant and the motorcycle rider lost their balance and fell down. They had seen the persons attacking them. He has given the

description of those persons and then states that the person wearing black shirt and jeans pant was holding knife. He assaulted Bhikan on his stomach, face and hand. Two - three blows were given to Bhikan. As a result when Bhikan shouted, the informant tried to save him. At that time that black shirt person assaulted informant by knife in his chest. The another person wearing white shirt was abusing. After informant and Bhikan got injured, those persons snatched the bag containing cash of Rs.4 Lakh. Those persons then fled away on the motorcycle. The said Bhikan has then expired, and therefore, the offence was registered under Section 302, 394, 397 read with 34 of the Indian Penal Code. Thereafter, the supplementary statement of the informant was recorded on 30-05-2019 wherein he has changed the description of the clothes of the persons. He had also changed the make/ company of the motorcycle of the accused. His another supplementary statement was recorded on 05-02-2020 which was after the identification parade was held and then he says that the motorcycle which was used by the accused was Yamaha Fazer and the motorcycle number is also then given. This shows that the informant has conveniently made additions in the statement. The duration after which the supplementary statements have been recorded is also required to be

considered. In the meantime, his statement under Section 164 of Code of Criminal Procedure was also recorded. Though the identification parade appears to have been held, there are legal points which would show that the said identification parade is inadmissible in nature. Statements of witnesses would also show that there is no direct evidence which would show that any witness had identified the accused persons. Some of the witnesses are hearsay on the point that they have given all the details which were told by the informant to them. When there is no direct evidence against the applicant in such manner then on the basis of alleged circumstantial evidence, the custody of the applicant need not be dragged till the conclusion of the trial. Definitely it would take much time to stand the trial.

5. Per contra, learned APP submitted that the evidence that has been collected against the applicant is strong enough to array him as accused. Though at the time of lodging FIR it was against unknown persons, yet after the accused persons have been arrested, in the identification parade, the informant has identified all the accused persons including the present applicant. Bhikan expired in the incident and his post-mortem report would show that there were

more than ten injuries on his person which were on his vital part. The probable cause of death is, "Death due to hemorrhagic shock due to stab injury, however final opinion reserved pending for accessory examination report." The informant had also received severe injuries and he could get the medical aid in time, and therefore, he has been saved. The injury was near his heart. The direct evidence is in the form of informant himself. Therefore, the manner in which the serious offence has been committed, disentitles the applicant to be released on bail.

6. At the outset, as regards the application under Section 439 of Code of Criminal Procedure is concerned, while considering bail application, this Court is required to see apart from other facts, the manner in which the offence has been committed and the gravity of the offence. Here in this case, one person has died and as aforesaid the post-mortem report shows that he had sustained more than ten injuries, most of them are the stab injuries and the probable cause of death is due to stab injuries. The prosecution story is that those blows were given by accused No.1 Ajay Ragde. Now as regards the present applicant is concerned, the prosecution has come with a case that he is accompanying the accused No.1 on the motorcycle

and he has received the booty. The amount that has been forcibly taken away is Rs.4 Lakh. Evidence that has been collected, especially the recovery under Section 27 of the Indian Evidence Act, would show that amount of Rs.24,000/-, a mobile phone were seized from the present applicant, and also his clothes. The manner in which the offence was committed is that at the night time unless the accused would have been knowing that the informant was carrying such huge amount, they would not have chased the informant and then while snatching the said amount, by use of sharp weapon, murder has been committed. Serious injury has been caused to the informant. Now as regards the two supplementary statements of the informant are concerned, he states that though he had given the description earlier, yet at the time of lodging FIR he was frightened and after his discharge from the hospital when he was recollecting the incident, he could make out the difference in the outfit. When his first supplement statement was taken on 30-05-2019 at that time the present applicant was not arrested. Therefore, it cannot be stated that after the arrest of the applicant there would have been some changes in the supplementary statement. There appears to be no concoction when the first supplementary statement was recorded. The incident has taken place on 13-05-2019, however the

accused persons including the present applicant came to be arrested on 18-12-2019. Thereafter identification parade has been held in presence of Executive Magistrate on 14-01-2020 and at that time he has identified accused No.1 and 2. Thereafter, the statement under Section 164 of Code of Criminal Procedure came to be recorded by learned Magistrate on 03-02-2020, and thereafter, the second supplementary statement of the informant was recorded on 05-02-2020. The chronology is then considered which does not interpret the things the learned Senior Counsel intends to interpret. The other recovery, especially the motorcycles used in the commission of crime are seized at the instance of accused No.1 and 3. Knife used in the commission of the crime is stated to have been recovered from accused No.1. Therefore, taking into consideration all these facts, prima facie evidence showing involvement of the applicant in the commission of the crime. He is not entitled to be released on bail, and therefore, his application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-