

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

BAIL APPLICATION NO.139 OF 2021

Nitin s/o Kishan Ghayal = **APPLICANT**

VERSUS

The State of Maharashtra = **RESPONDENT**

Mr.SS Rathi,Advocate for Applicant;

Mrs.DS Jape,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.

RESERVED ON : 1st March, 2021.

PRONOUNCED ON: 9th MARCH,2021

PER COURT :-

1. Present applicant has been arrested in connection with CR No.272/2019 registered with Parbhani Rural police station, Parbhani for the offences punishable under Sections 302, 449 read with 34 of IPC. Present application has been filed under Section 439 of Cr.P.C.

2. Heard learned Advocate and learned APP appearing for respective parties.

3. It has been vehemently submitted on behalf of the applicant that perusal of FIR would show that it is lodged by wife of deceased – Dnyaneshwar @ Dnyanoba Bapurao Aaswar against three unknown persons. It is lodged on 8.11.2019 in respect of the incident that had taken place early

in the morning on that day around 1.15 am. She has stated that she was residing with her husband and two children. Her mother-in-law and two sisters-in-law reside in the same Wada, however, separately. She herself and her husband had returned from labour work around 6.00 pm on 7.11.2019 and after having dinner, they went to sleep. Three persons came around 1.15 am. Though she states that they had latched the door of their house, she was unable to state as to how those persons had opened the door and after entering in their room, one person had sprinkled spray on her face and her husband, because of which, they got awake. When she was rubbing her eyes, two, out of those three persons, dragged her husband by tying knot of rope to his legs and took him in the courtyard of one Shripati Bobde. Those persons thereafter assaulted her husband with some sharp weapon on his neck. Her husband shouted for help and when she was shouting, another person had put white adhesive tape on her mouth and by catching her both arms, he was standing there, so that she could not shout. After a while, the person catching her, took out adhesive tape from her mouth and all the three fled away. She went near her husband and saw that he was in a pool of blood. After she raised voice, her mother-in-law and others came. The fact was informed to police and after the police had come, further things had taken place and then she has lodged the report.

4. The learned Advocate for the applicant

further submitted that the informant in her supplementary statement, has further stated that her father-in-law has another wife and he resides at Mumbai with second wife. Second wife has one son by name Amol and two daughters. She further states that there used to be quarrel between her husband and father-in-law on the count of immovable property. This supplementary statement has been recorded after the present applicant and co-accused Amol and present applicant's friend viz. Balasaheb, were arrested by the police. But, if we see her supplementary statement, then it can be seen that it is styled as if she is getting information from police after the police made enquiry with the accused persons. That means, independently, she is not saying that there was any motive behind the murder. The evidence that is collected against the present applicant is in the form of discovery of weapon and clothes under Section 27 of the Indian Evidence Act. Further, there is a statement of hotel owner, where the present applicant had stayed on that night. Except this, there is nothing on record. Now, the investigation is over, and, therefore, further physical custody of the applicant is not required. It will take longer time to stand the trial and, therefore, he prayed for bail to the applicant.

5. Per contra, learned APP strongly objected the application and submitted that the present applicant has committed brutal murder. Present applicant is the brother-in-law of Amol Bapurao

Aaswar, who is step-brother of deceased Dnyanoba. Deceased Dnyanoba had dispute in respect of immovable property with father and the step-mother. That was the motive for him to commit the crime. The evidence, as aforesaid, is in the nature of discovery. Murder has been committed in a planned way. The applicant has discovered the spray bottle as well as the adhesive tape, which he had thrown while fleeing away from the spot of occurrence. The applicant and other persons were seen in the vicinity of the place of offence on the earlier night. Otherwise, they are residents of Mumbai. This evidence is sufficient to hold that there is a strong involvement of the present applicant in the crime to disentitle him from claiming bail.

6. At the outset, it is to be noted that the FIR is lodged against three unknown persons though the informant is an eye-witness to the incident. The impression from the FIR as well as her supplementary statement would show that though spray was sprinkled on her face, she was able to see as to what was happening. But, then it appears to be surprising as to how she could not have recognized her step-brother at least. Whether she was knowing the brother-in-law of her step-brother, i.e. present applicant, prior to the incident or not is a question. But then definitely she might be knowing the step-brother of her husband prior to the incident. Still the FIR has been lodged against unknown persons. It can be seen from her FIR as well as her supplementary statement that

nobody had come forward, when she had initially shouted, before any adhesive tape was fixed on her mouth. Though the other witnesses are saying that they had seen the dead body of Dnyanoba; yet they had not seen the assailants including mother of the deceased, who reside separately in the same Wada. Under such circumstance, the evidence that is collected against the present applicant is the discovery panchanamas and the statements of those witnesses, who had seen the present applicant and co-accused in the vicinity. Therefore, with this kind of evidence, the applicant need not be asked to remain in jail till conclusion of his trial. Further, the investigation is over and charge sheet is filed on 27.1.2019 itself. There appears to be no much progress in the trial. The applicant has been arrested on 14.11.2019. Therefore, with stringent conditions, the applicant deserves to be released on bail. Hence, following order, -

ORDER

- i. The Bail Application stands allowed.
- ii. The applicant be released on bail in connection with CR No.272/2019 registered with Parbhani Rural police station, Parbhani for the offences punishable under Sections 302, 449 read with 34 of IPC on PR bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.
- iii. The applicant shall not indulge

in any criminal activity nor shall tamper with the prosecution evidence in any manner.

iv. The applicant shall not enter in village Bobde Takli, Tq. And District Parbhani, till conclusion of the trial.

v) The applicant shall comply with the requirements set out in Para No.12(1) to (6) of Chapter-I of Criminal Manual, whichever are applicable.

vi. Bail before the trial court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV