

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.236 OF 2021

Gajanan @ Gajeshkumar s/o Vitthal Pole,
Age 25 years, Occupation Agriculture,
R/o Dhirda, Taluka and District Hingoli.
(At Present in Jail Custody)

**...Petitioner
(Original Accused)**

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Basamba Police Station,
Taluka and District Hingoli.

...Respondent

.....
Advocate for Petitioner : Mr. S. S. Rathi
APP for Respondent-State : Mr. N. T. Bhagat.
.....

CORAM : SMT.VIBHA KANKANWADI, J.

**DATE OF RESERVING THE ORDER :
29-04-2021**

**DATE OF PRONOUNCING THE ORDER :
08-06-2021**

ORDER :

1. Present applicant came to be arrested on 18-11-2019, in connection with Crime No.209 of 2019, registered with Basamba Police Station, Taluka and District Hingoli, for the offence punishable under Section 302, 506 of the Indian Penal Code. Initially the offence was registered under Section 307 of the Indian Penal Code, however after the deceased succumbed to the injuries, it has been converted to

Section 302 of Indian Penal Code. Present application has been filed under Section 439 of the Code of Criminal Procedure.

2. Further it will not be out of place to mention here that the present application is the second application of the applicant before this Court. His earlier Bail Application No.993 of 2020 was withdrawn by the applicant on 19-09-2020 with leave to apply for regular bail after the receipt of the Chemical Analysis report. At that time though the weapon and clothes of the deceased as well as accused were seized and they were sent for Chemical Analysis, the report was awaited. Now, after the submission of the Chemical Analysis report, the applicant had approached the learned Additional Sessions Judge once again and his bail application then rejected on 11-01-2021, hence he is before this Court.

3. Heard learned Advocate Mr. S. S. Rathi for applicant and learned Additional Public Prosecutor Mr. N. T. Bhagat for respondent-State. In order to cut short it is stated that, both of them have made submissions in support of their respective contentions.

4. At the outset, it can be said that the case is based on circumstantial evidence. Perusal of the First Information Report

lodged by the wife of the deceased Kuberrao Gajananrao Naik would show that around 04.00 p.m. on 14-11-2019 deceased had received phone call from the present applicant inviting him for meals and taking into consideration the time it appears to be the invitation for the lunch. Deceased informed him that he has already had his lunch. Thereafter, his relative Bandu Gadade had come to his field to meet him around 05.30 p.m. After his hospitality deceased told that he would leave him till the junction (Phata) around 06.30 p.m. Thereafter, Vishal Kuberrao Naik, who is the son of the deceased, received phone call of his friend around 07.30 p.m. stating that his father is lying near the field of the present applicant. Therefore, the brothers of deceased went to the spot by motorcycle whereas informant and her co-sister went by walk. They found Kuberrao in injured condition in front of the field having structure belonging to the present applicant. Blood was oozing out of his nose. He was not in a position to talk. They made inspection and found that near the raised platform of the structure, they found the chappals of the deceased and also his big handkerchief having blood stains. They found blood stains on wooden stick also at the said place. Arrangements were made to take him to hospital. Initially he was taken to Government Hospital, Hingoli in unconscious state. He was

then referred to Nanded and, therefore, he was shifted in an ambulance and was admitted in Yasho Sai Hospital, Nanded. It is her say that present applicant used to give threats to kill him since last elections stating that the deceased has taken money in the said election. As aforesaid, when she lodged the report, the deceased was alive.

5. Now the investigation is over and charge-sheet is filed. The post mortem report would show that in column No.17 there were about five surface wounds. There are internal injuries as appears to be corresponding to those external injuries. The probable cause of death is, "death due to head injury" (unnatural). The statements of most of the witnesses recorded under Section 161 of the Code of Criminal Procedure as well as 164 of the Code of Criminal Procedure would also show that none of them are eye-witness and they have stated only the fact that they had seen the blood stains near the hut like structure in the field of present applicant. They have described it as "Akhada". Therefore, there may be a fact that deceased Kuberrao expired due to those injuries. There is no direct evidence to connect the present applicant stating that he is the author of the crime. The connecting piece of evidence is only the discovery under

Section 27 of the Indian Evidence Act. It is to be noted that he has discovered his own clothes and iron rod. If we consider the Chemical Analysis report, then the blood sample of the present applicant gives result that his blood group is "A". The blood sample of deceased gives his blood group as "O". Blood group detected on the cotton swab, branch of tree/ stick and the earth in packet mixed blood stains, iron rod and jeans pant shows that the blood group cannot be determined as the results are inconclusive. However, the big handkerchief (अपराणे), T-Shirt in a packet, full pant and another big handkerchief (अपराणे) has blood stains of blood group "O". The discovery of clothes by present applicant includes T-Shirt and jeans pant. Thus, if we co-relate the discovery with the Chemical Analysis report, only the T-Shirt appears to be having blood group "O". Therefore, with this kind of evidence, the applicant need not be kept in jail as it would take long time to stand his trial. Subject to conditions, he deserves to be released on bail. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) Applicant/ accused Gajanan @ Gajeshkumar s/o

Vitthal Pole, in Sessions Trial No.31 of 2020, pending before learned Sessions Judge, Hingoli, (in connection with Crime No.209 of 2019, registered with Basamba Police Station, for the offence punishable under Section 302, 506 of the Indian Penal Code), be released on P.R. of Rs.50,000/- (fifty thousand) with two solvent sureties of Rs.25,000/- each (twenty five thousand).

- 3) The applicant shall not tamper with the evidence of the prosecution in any manner.
- 4) He shall not indulge in any criminal activity.
- 5) Before submission of bail papers, the applicant should give complete address of his residence with his mobile number. So also he should comply with the requirements under paragraphs No.12 (1) to (6) of Chapter I of Criminal Manual, whichever are applicable.
- 6) Bail before Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-