

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.98 OF 2021

GANESH S/O BHAURAO GHATOL
VERSUS
THE STATE OF MAHARASHTRA

.....
Mr. N. S. Ghanekar, Advocate for the applicant.
Mr. A. M. Phule, APP for the respondent – State.

.....
WITH
CRIMINAL APPLICATION NO.697 OF 2021
IN BA/98/2021

PAVAN S/O ANANDRAO GHATOL
VERSUS
GANESH S/O BHAURAO GHATOL AND ANR

.....
Ms. A. D. Chate, Advocate for the applicant.
Mr. N. S. Ghanekar, Advocate for respondent No.1
Mr. A. M. Phule, APP for respondent No.2 – State.

.....

CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 10th March, 2021
Pronounced on : 18th March, 2021

ORDER :-

. Criminal Application No.697 of 2021 filed by the original informant for assisting public prosecutor is allowed and disposed of.

2. Present applicant has been arrested on 27.09.2018 in connection with Crime No.131 of 2018 registered with Sonkhed Police Station,

District Nanded for the offence punishable under Sections 302, 143, 147, 148, 149, 323, 506 of Indian Penal Code. He has filed present application for bail under Section 439 of the Code of Criminal Procedure.

3. Heard learned Advocate Mr. N. S. Ghanekar for the applicant and learned APP Mr. A. M. Phule for the respondent – State assisted by learned Advocate Ms. A. D. Chate for the original informant. In order to cut short, it can be said that both the learned Advocates have made submissions in support of their respective contentions.

4. It will not be out of place to mention here that one co-accused Bhaurao Dnyanoba Ghatol had initially filed Anticipatory Bail Application No.1586 of 2018 before this Court. While allowing to withdraw that application on 20.03.2019, this Court had given liberty to the applicant to make an application for bail, if the trial does not get concluded within a period of one year. Thereafter, the trial was not over within one year and, therefore, he had filed Bail Application No.1163 of 2020 before this Court and the said application came to be allowed by this Court on 03.11.2020. No doubt, the main reason which prevailed over this Court was the age of that applicant at that time i.e. 72 years of age and it was on account of pandemic situation due to Covid-19. Now,

this application has been filed by the present applicant stating that in spite of he was arrested on 27.09.2018, the matter has not proceeded at all and his vital rights under the Constitution of India are also hampering. He has movable as well as immovable property within the jurisdiction of the Trial Court and he is ready to abide by the terms of the bail.

5. Taking into consideration those observations by this Court which were made way back on 20.03.2019, status of the case was called from learned Additional District Judge, Kandhar. The Sessions Case has been numbered as 05 of 2019. "It has been reported that the present applicant who is accused No.6 and accused No.1 are presently lodged in Parbhani Jail. It is stated that the matter had appeared for the first time for framing charge on 30.04.2019. Thereafter, on number of occasions, the under trial accused Nos.1 and 6 were not produced by jail authority due to Covid-19 situation." In fact, it appears that the learned Additional Sessions Judge failed to take note of the fact that the Covid-19 situation and the lock-down was declared from 22.03.2020. That means, after about a year, when the matter had come for framing of charge, still such reckless statement has been made. It is further reported that initially after arrest, accused persons were shifted from Nanded Jail to Aurangabad Jail and thereafter, on 25.10.2019, they were shifted to

Parbhani Jail. According to the learned Judge due to said shifting, the accused persons were not produced before him on the given dates. It appears that the learned Judge is required to be reminded of his powers, that in case the jail authorities are not producing the accused persons for a considerable period, then he is required to give appropriate directions to the jail authorities. In the status report, he has not stated as to what action he had taken, when it was noticed by him that repeatedly the accused persons were not produced before him. The report has been submitted on 04.03.2021 and it can be seen that till that date, even the charge has not been framed in the matter. That means, when the present accused came to be arrested on 27.09.2018 and it appears that accused No.1 has been arrested on 26.08.2018, yet, till the date of report, no efforts were taken to frame the charge in the matter. Further, it is with the background that this Court had given liberty to the co-accused to file Bail Application if the trial does not get concluded within a period of one year from 20.03.2019.

6. Even if the above said situation has been mentioned, yet as regards the present applicant is concerned, another fact is required to be noted which is apart from the merits of the case, that this Court had rejected his Bail Application No.1389 of 2019 on 29.06.2020. The said order has been produced on record which shows that the merits of the

case were also considered by this Court while rejecting the said bail application. No doubt, the co-accused Bhaurao's application i.e. Bail Application No.1163 of 2020 was allowed by this Court on 03.11.2020 that is subsequent to the rejection of the bail application filed by the present applicant, yet he cannot canvass the ground of parity for the simple reason that, the said ground that already the observations regarding trial to be over within a period of one year were observed in the order dated 20.03.2019, could have been pointed out in his Bail Application No.1389 of 2019. Further, the perusal of the bail application in which bail was granted to Bhaurao would show that taking into consideration his age as 72 years and the pandemic situation had prevailed upon this Court to grant him bail. Under such circumstance, when this Court had already rejected the bail application by the present applicant on merits on 29.06.2020, there is no change in the circumstance. No progress in the matter for about six months after the bail application was rejected cannot be a change in circumstance entitling the present applicant to be released on bail. Hence, the application deserves to be rejected, however, at the same time taking into consideration the earlier observations, specific directions are required to be given to the learned Additional Sessions Judge to expedite the case and make its disposal time bound. Hence, the

following order :-

ORDER

. Application stands rejected, however, learned Additional Sessions Judge, Kandhar, District Nanded is directed to expedite the trial of Sessions Case No.5 of 2019 (State Vs. Morarji Ghatol and Ors.) and to dispose of the said case as early as possible and it be concluded by the end of October, 2021.

[SMT. VIBHA KANKANWADI, J.]

scm