

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

927 BAIL APPLICATION NO. 860 OF 2021

**GANESH RAJU WATH
VERSUS
THE STATE OF MAHARASHTRA**

Shri. D. M. Shinde, Advocate for the applicant
Shri. V. M. Kagne, APP for the respondent/State

CORAM : M. G. SEWLIKAR, J.

DATED : 21st September, 2021

PER COURT :-

1. Applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with CR No. 255 of 2020 registered with Aundha Nagnath Police Station, Dist. Hingoli under Sections 302 and 201 read with Section 34 of the Indian Penal Code.

2. It is alleged in the FIR lodged by the wife of the deceased that the applicant is the nephew of the deceased. There was a dispute between the deceased and the accused on account of the well water. It is further alleged in the FIR that on this count in the year 2019, the informant had

lodged an FIR against Raju Wath on the basis of which offence was registered against the said Raju Wath. Raju Wath always used to say that he would not allow them to take the well water.

3. It is further alleged that on 19th November, 2020 at 11.00 p.m. husband of the informant and the deceased Raju Wath had gone to the field for watering the crop of wheat. He did not return till 7.00 a.m. of the next day. Therefore, the informant sent her two children aged 17 and 11 years in search of the deceased. The sons of the informant found deceased floating in the well water. When the dead body was fished out, it was revealed that the dead had as many as 10 injuries out of which 6 were incised wound and he had also sustained 4 fractures. The dead body was referred to the Medical Officer for post-mortem. On receipt of post-mortem report that the death was caused on account of head injury, offence was registered under Sections 302, 201 read with Section 34 of the Indian Penal Code against the applicant.

4. Heard Shri. Shinde, learned counsel for the applicant and Shri. Kange, learned APP for the respondent/ State.

5. Shri. Shinde, learned counsel submitted that the only evidence against the applicant is in the nature of discovery panchnama under Section 27 of the Evidence Act. He submitted that knife was recovered at the instance of the applicant and was referred to the Chemical Analyzer for analysis but the report is in the negative. The report states that the result was inconclusive.

6. Learned APP Shri. Kagne submitted that the evidence against the applicant is cogent. The knife was concealed under a stone on the bank of a brook. Because of the water of the brook the possibility of the blood stains on the knife being washed off cannot be ruled out. He submitted that in the wake of number of injuries sustained by the deceased, he is not entitled to release on bail.

7. Charge-sheet is filed. Therefore, further detention of the applicant does not seem to be necessary. The only evidence against the applicant is recovery of knife at the instance of applicant. CA report shows that the results as regards blood stains are inconclusive. Therefore, at this stage there is no evidence to connect the applicant with the offence. The submission that the possibility of the blood stains being washed out because of the water of the brook is a matter to be considered at the stage of the trial. At this stage, from the evidence on record, it cannot be said that it is not the case of bail.

8. The learned Sessions Judge rejected the application on the ground that the informant had already registered one offence against the applicant and since the head of the family is murdered, there is no one to look after the family and there is possibility of the applicant pressurising the witnesses. The applicant can be released on bail by putting him to stringent conditions. In view of this, following order is passed.

ORDER

1. Application is allowed.
2. Applicant be released on bail on his furnishing PR bond of Rs. 50,000/- (Rupees Fifty Thousand only) with one solvent surety in the like amount in connection with CR No. 255 of 2020 under Sections 302, 201 read with Section 34 of the Indian Penal Code registered with Aundha Nagnath Police Station, Dist. Hingoli and on condition that he shall not enter the limits of village Aundha Nagnath, Dist. Hingoli till the conclusion of the trial.
3. Application is disposed of.
4. It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

[M. G. SEWLIKAR, J.]

ssp