

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

BAIL APPLICATION NO.1253 OF 2020

Munjaji @ Pintu s/o Sambhaji Gutte = **APPLICANT**

VERSUS

The State of Maharashtra = **RESPONDENT/S**

Mr.SG Kawade, Advocate for Applicant/s;

Mrs.DS Jape, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 11th January, 2021.

PER COURT :-

1. Present applicant has been arrested in connection with CR No.215/2015 registered with Gangakhed Police Station, District Parbhani for the offences punishable under Sections 302, 364, 143, 147, 148, 149, 109, 201 of IPC. It also appears that after completion of the investigation, charge sheet was filed; Sessions Case has been committed and now the present applicant is facing trial in Sessions Trial No.32/2015. The applicant is now praying for bail under Section 439 of Cr.P.C.

2. It will not be out of place to mention here that earlier bail application filed by the present applicant bearing No.5248/2016 was rejected

by this Court on 4.10.2016. Thereafter the applicant had filed Special Leave to Appeal (Criminal) No.519/2017, challenging the order of this Court before the Hon'ble Apex Court, which he has withdrawn on 8.12.2017. Thereafter, again the present applicant had filed Bail Application No. 986/2018 for regular bail, which came to be disposed of as withdrawn by this Court on 9.10.2018. While disposing of the said application, this Court had given liberty to the applicant to file an application for bail afresh before the Trial Court and it was also directed that if such application is filed, the Trial Court shall decide it on merits. Thereafter, the applicant had again approached this Court by filing Bail Application No.1595/2018, which was then rejected by this Court on 16.1.2019 and again it appears that at Exhibit-348 before the Trial Court, the application was filed for regular bail, which came to be rejected and hence the present bail application.

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

4. It has been vehemently submitted on

behalf of the applicant that though the case is pending since 2015, the applicant came to be arrested on 21.2.2016 and since then he is in jail and there is no much progress in the Sessions Case. It has been stated that due to the lack of legal knowledge and communication with the relatives, the applicant had not filed bail application before this Court even after liberty was granted by this Court. Perusal of the entire charge sheet would show that no specific role has been attributed to the present applicant. Co-accused — Laxman Dhondiba Mundhe has been released on bail by this Court by order passed on 3.8.2016. However, the ground of parity was not made available to the present applicant. Now, only deposition of the informant has been recorded by the trial court and the matter is part-heard. Due to COVID-19 pandemic situation, the matter is lingered. The applicant is accused No.10 and other nine accused persons have been released on bail. As the Corona virus has affected the jails, especially, Parbhani prison, where he has been kept and also the fact that the applicant was suffering from COVID-19, however, he has been recovered, he is having other

complications. The applicant is young and the only earning member of the family. He cannot be allowed to linger in the jail and he is not prolonging the matter. Therefore, he be released on bail.

5. Per contra, learned APP strongly opposed the application and submitted that the application itself is not maintainable. Though there was COVID-19 situation and even the applicant was affected, he is now cured. There is nothing produced by him on record to show that he has any kind of complications. The consistent view as against the present applicant has been taken that he is not entitled to be released on bail. There is ample evidence against the present applicant. Specific role has been attributed to the present applicant. The incident has taken place due to political rivalry. The weapons used in the commission of the crime are iron rod, sticks. Post mortem report gives cause of death as -"Cardiac respiratory arrest due to asphyxia due to hemorrhagic shock due to multiple injuries." Therefore, taking into consideration the evidence that is on record against the present applicant, he is not entitled to be released on bail.

6. At the outset, it can be seen that this Court has consistently rejected the bail applications filed by the present applicant for regular bail and they are, in fact, filed after submission of the charge sheet or even prior to that all the police papers have been considered. Even after the charge sheet was filed, when the present applicant approached this Court, the present applicant sought leave to withdraw the application when the matter was before this Court on 10th September, 2018. Then it was submitted that the applicant would satisfy if directions are given to the trial court to expedite the hearing. Accordingly, the trial was expedited and then liberty was also given that if the trial is not concluded within period of six months, then the applicant would be entitled to file an application for bail afresh before the trial Court. In spite of rejection of the bail by the Trial Court, thereafter he did not come to this Court immediately. But then he approached this Court by filing Bail Application No.1595/2018. By order dated 16.1.2019, it was specifically observed that, the applicant has not given any kind of explanation

as to why he had not filed any such application earlier. That application was also rejected by this Court. The applicant has not challenged the said order before the Hon'ble Apex Court.

7. Now, the trial has begun. It is part-heard. It can also be seen from the Exhibit, that was given to the bail application filed by the present applicant, i.e. Exhibit-348, that some progress has been made. Definitely due to pandemic situation, progress of the trial might have been hampered. However, physical hearing of the cases was not in progress at that time and, therefore, nobody can be blamed for the same. The applicant has stated that he was also infected, but then he has been cured. The document on record shows his present state of health. There is absolutely no document on record produced by him to show that he has any kind of complication. Under such circumstance, when the merits of the case have already been considered by this Court, this Court does not want to re-visit the same. The applicant is not entitled to be released on bail. However, once again the Trial Court can be directed to expedite the trial and to conclude the same within

time bound since the matter is old one. Hence,
following order, -

ORDER

i. The Bail Application stands
rejected.

ii. The learned Additional Sessions
Judge, Gangakhed, District Parbhani to
expedite Sessions Trial No.32/2015 and to
dispose it of on merits within a period
of six months from the date of receipt of
writ of this Court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV