

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

935 BAIL APPLICATION NO.1125 OF 2021

Balaji s/o Digambar Devke
Aged: 41 years, Occu.: Business,
R/o. Jamb (Bk.), Tq.Mukhed,
Dist.Nanded.

..Applicant
(Orig. Accused No.2)

VERSUS

The State of Maharashtra,
Through Police Station, Mukhed,
Tq.Mukhed, Dist.Nanded.

..Respondent

...
Advocate for Applicant : Shri V.D. Gunale
APP for Respondent : Shri V.M.Kagne

...
CORAM : M.G.SEWLIKAR, J.

DATE: 14th October, 2021

PER COURT:-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No.402 of 2020 registered with Mukhed Police Station, District Nanded, under Section 302 read with Section 34 of the Indian Penal Code.

2. Allegations against the applicant are that the deceased Narayan Pawar was the son of the informant Ankush Pandharinath Pawar. At 04:00 p.m. on 18th

December, 2020, the deceased and the applicant had gone to the field and they came back in the evening. Both of them had left for Jambh. At 10:45 p.m., one Ramkishan Yelewad informed the informant telephonically that deceased Narayan was found on the road near Tiranga Dhaba in injured condition. When the informant and his nephew Maruti Govind Dalve went to the spot, they found the deceased Narayan having injuries on his buttocks, anus and other parts of the body. The deceased was not in a position to speak. He was only saying that he had altercation with the applicant and owner of Tiranga Dhaba by the name of Balaji Devke. Thereafter, he fell unconscious and did not regain consciousness. He passed away on 23rd December, 2020 at 01:30 a.m. On these allegations, Crime No.402 of 2020 came to be registered on 23rd December, 2020 with Mukhed Police Station, District Nanded, under Section 302 read with Section 34 of the Indian Penal Code.

3. Heard Shri V.D.Gunale, learned counsel for the applicant and Shri V.M.Kagne, learned APP for the respondent-State.

4. Shri Gunale, learned counsel for the applicant submits that this Court (Coram : M.G.Sewlikar, J.) has released another accused on bail. He submits that the applicant stands on the same footing. Their roles are identical. He submits that the only variance is with respect to the weapon used. In case of the accused, who is released on bail, it is alleged that he had used knife. He submits that except this, the role of the applicant and accused No.1, who is released on bail, is identical.

5. Learned APP for the respondent-State submits that there are the statements of the witnesses to whom the deceased had given oral dying declaration. He submits that in the said oral dying declaration the deceased has implicated the applicant. He submits that sickle is recovered from the applicant. Therefore, there is sufficient evidence against the applicant.

6. On perusal of the charge-sheet, it appears that Ramkishan Nagorao Yelewad stated in his statement under Section 161 of the Code of Criminal Procedure that when he reached to the spot, he found deceased lying there with

multiple injuries on buttock and anus. It has further come in his statement that there was some altercation between the applicant and the deceased. Witness Sambhaji Yelewad stated in his statement under Section 161 of the Code of Criminal Procedure that the deceased had pelted onion on the face of accused No.1. It is further stated by this witness that he, Ramkishan Yerpurwad, Ganpat Yelewad, and accused No.1 left Tiranga Dhabha in an auto. They dropped accused No.1 at 09:00 p.m. at village Sindagi. Similar is the statement of Ganpat Malhari Yelewad and Ramkishan Yadav Yerpurwad. At the instance of the applicant sickle has been recovered which does not have blood stains. The deceased died after the incident. Cause of death is a "Septicemia in operated case and blunt trauma to abdomen" but it is not mentioned cause of death is because of multiple injuries.

7. Applicant has no criminal antecedents. He runs a Dhaba. He has permanent residence at village Jambh (Bk.), Tq.Mukhed, District-Nanded. He, therefore, is not likely to abscond and will be available for trial. Since the charge-sheet is filed, there is no question of tampering with the evidence. The roles of the applicant and the accused, who

is released on bail, are identical. On the ground of parity also applicant is entitled to be released on bail. In view of this, following order is passed:

ORDER

- i) Application is allowed.
- ii) Applicant be released on P.R.Bond of Rs.25,000/- (Rs. Twenty-five thousand only) with one solvent surety in the like amount, in connection with Crime No.402 of 2020, registered with Mukhed Police Station, Dist.Nanded, under Section 302 read with Section 34 of the Indian Penal Code.
- iii) Application is disposed of.
- iv) 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)
JUDGE