

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1479 OF 2020

Ganesh s/o Ramkishan Dorle,
Age 27 years, Occupation Agriculture,
R/o Raholi Bk. Taluka and District
Hingoli.

....Applicant

VERSUS

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

....Respondent

Advocate for Applicant : Mr. J. V. Deshpande and
Mr. B. N. Magar Patil.

APP for Respondent-State : Mr. A. M. Phule.

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
24-02-2021.**

**Date of Pronouncing The Order :
06-04-2021.**

ORDER :

1. Present applicant is accused No.1 in Sessions Case No.123 of 2019, he came to be arrested on 22-05-2019 by Hingoli Rural Police Station District Hingoli, in connection with Crime No.143 of 2019, for the offence punishable under Sections 302, 143, 147, 149 of Indian

Penal Code. This is his second application for bail under Section 439 of Code of Criminal Procedure before this Court. His earlier bail application has been withdrawn by him on 13-01-2020. At that time directions were given by this Court to the Trial Court to conclude the trial within eight months from the date of the receipt of the copy of the order. Liberty was granted to the present applicant to move application for bail if the trial does not get concluded within time framed.

2. Heard learned Advocate Mr. J. V. Deshpande and B. N. Magar Patil for applicant and learned Additional Public Prosecutor Mr. A. M. Phule for respondent-State.

3. It has been vehemently submitted on behalf of the learned Advocate for the applicant upon the query made by this Court, as to whether there is any change in the circumstance ? because the applicant had withdrawn the earlier bail application, definitely at that time also the charge-sheet was before this Court. It is submitted that, since the Trial Judge did not conclude the trial within the frame work, the applicant has utilized the liberty that was granted by this Court to him. At the outset it is to be noted that, time of eight months was granted to the Trial Court in January 2020, this Court

cannot forget the fact that from 22-03-2020 there was complete lockdown due to the COVID-19 pandemic situation. Standard Operating Procedure was framed by this Court and it was made applicable to all the Trial Courts. The work of recording evidence was permitted only from the second or third week of January 2021. Under such circumstance, there could not have been a progress in the present case. Merely because that liberty was granted because such unimaginable situation could not have been imagined when the order of granting liberty was passed by this Court, that does not mean that the applicant should again make an attempt to get the bail under Section 439 of Code of Criminal Procedure, only on that count. As regards merits of the case is concerned, this Court was not inclined as it appears from the order that was passed. The applicant has also not stated as to what effort he had made to move the concern Court to get the expeditions disposal of the case. He has not filed on record any copy of the application he had moved before the Trial Court, specifically bringing notice to the Court the order that was passed by this Court. Therefore, the order that was passed by this Court cannot be utilized only to take advantage by suppressing his own act of not bringing to the notice of the Court the order that was passed by this Court in the past. Therefore, on

this count itself the present application deserves to be rejected.

4. However, if we consider the merits of the case, it has been vehemently submitted on behalf of the applicant that there is no direct evidence against the present applicant. The First Information Report is lodged by the father of the deceased and he only says that when he was proceeding from the field, he found seven named persons including the present applicant and at that time the applicant was holding an axe. It was in his mind that all those persons were proceeding towards their field and, therefore, he did not say anything. But then when he was returning back, he found his son Shankar in injured condition. He was not in a position to speak. That means, he never had the occasion to have first an information from his son. Statement of the sister of the deceased, that is daughter of the informant, has been recorded. It is to be noted that the incident is stated to have taken place on 21-05-2019, but her statement came to be recorded on 27-05-2019. Her presence was not even told by the informant, and under this circumstance without there being any reason for belated recording of their statement, her statement cannot be considered. The alleged discovery of weapon is by co-accused Ambadas. As regards the

present applicant is concerned, the discovery is stated to be of clothes. The Chemical Analysis report is not corroborating. Therefore, with this kind of evidence the applicant need not be asked to remain in jail. He deserves to be released on bail.

5. Per contra, learned Additional Public Prosecutor strongly opposed the application and submitted that there is ample evidence against the present applicant. His name is specifically appearing in the First Information Report. There was dispute in respect of the suit land between deceased Shankar and the present applicant. Present applicant is the nephew of the informant. It would not have taken the informant much longer time than he had seen the applicant with axe, to have round of his field and come to the place where he found the body of his son and, therefore, when the all those seven persons were seen by him near the spot of the incident, that too with weapon, it is one of the circumstance that is required to be considered. So also merely because the statement of daughter of the informant is allegedly belated, we cannot keep it aside. She had specifically seen present applicant assaulting with axe to Shankar. Thereafter, there is statement of one Najerkha Jabbarkha Pathan whose mobile phone was taken by the present applicant to

have a phone call, but the person at the another end had not picked up. He found the present applicant to be in frightened condition and there is extrajudicial confession to this witness by the present applicant that, they have killed. The discovery is of the clothes and by the co-accused of the weapon. Chemical Analysis report show the group of blood stains on the clothes of the applicant as of "A" group. No case is made out to exercise discretionary powers.

6. At the outset, it can be seen from the contents of the First Information Report that there appears to be boundary dispute in between the informant and the applicant. Informant's son had taken objection for damaging the bandh of the field. Thereupon the present applicant is stated to have given him threat to kill, though it is stated that they had tried to resolve the said dispute. On the day of incident the applicant was seen with axe near the spot. Informant was under impression that he is proceeding towards his field for agricultural operations, but at that time the other six persons were stated to be along with him. Thereafter, there is statement of the daughter of the present applicant, whose presence at the spot was whether natural or not, will have be considered by the Trial Court after the evidence is over. But at this stage apart from recording it

belated, there is another factor which would allow this Court to keep it aside. Another piece of evidence against the applicant is the extrajudicial confession. Third piece of evidence is regarding discovery, therefore when there is evidence against the present applicant and with the background that this Court was earlier not inclined to grant bail to the present applicant, and then he had sought withdrawal of the application, no case is made out to use the discretionary powers. Hence, the application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-