

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.11 OF 2022
IN BA/527/2020

VIJAY S/O BABASAHEB WAKLE
VERSUS
THE STATE OF MAHARASHTRA

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Mr. Girish Rane h/f Mr. S. S. Rathi, Advocate for the applicant.
Mr. N. T. Bhagat, APP for the respondent – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 21.01.2022

ORDER :-

. Present application has been filed for relaxation of condition imposed while granting bail to the applicant.

2. Applicant is the original accused in Crime No.138 of 2020 registered with Nanal Peth Police Station, Dist. Parbhani for the offences punishable under Sections 302, 201 read with Section 34 of Indian Penal Code. This Court by order dated 11.08.2020 had granted bail to the present applicant by imposing conditions. Condition No.(b) that was imposed was :-

“b] The applicant shall not enter within the limits of Parbhani City till conclusion of the trial except for attending the Court’s dates.”

3. Heard learned Advocate Mr. Girish Rane holding for learned Advocate Mr. S. S. Rathi for the applicant and learned APP Mr. N. T. Bhagat for the respondent – State.

4. Learned Advocate for the applicant submits that one Minakshi w/o Shaikh Hamid had lodged the report with Nanal Peth Police Station, Dist. Parbhani on 14.03.2020 alleging that the present applicant had caused murder of her husband. The applicant has daughter aged 4. Applicant's wife Sapna had expired much earlier and, therefore, when condition was imposed in the bail application, applicant had given his daughter in adoption to his in-laws for taking care of his daughter. He has produced the adoption deed dated 31.08.2020. The applicant is now residing outside Parbhani City and is doing labour work. Earlier he was the proprietor of a firm by name Vijay Mandap Decoration and he used to earn by providing decoration material on rent. He was required to close down his business. Now, the mother-in-law of the applicant Jaishree Kankute expired on 10.04.2021. She was the person, who was looking after the daughter, however, now there is nobody to take care of the minor daughter of the applicant. It is difficult for him to carry the minor daughter from one village to another in search of labour work. Considering the hardship to the minor and also delay in trial, the condition imposed by this Court deserves to be relaxed.

5. Application has been strongly opposed by the learned APP on the ground that there is direct evidence against the present applicant. The informant, who had lodged the report in the said Crime, is the eye witness. It can be seen that there was dispute between the said informant, her husband and the present applicant. On 25.01.2020, there was some exchange of dialogues between the wife of the present applicant and husband of the informant. It is stated that husband of the informant Shaikh Hamid had gone to the house of mother-in-law of the applicant to ask for pardon. However, there was quarrel between the applicant's wife and Shaikh Hamid. In that incident, wife of the present applicant expired and on that basis of FIR lodged by the applicant, offence under Section 304 of Indian Penal Code came to be registered against Shaikh Hamid as well as the informant. They both were arrested. The informant was released on bail on 05.03.2020. Shaikh Hamid was released on bail on 13.03.2020. Informant had told her husband Shaikh Hamid that he would be assaulted and, therefore, he should not come to the house, but stay in a lodge and, therefore, he went to one Nazia lodge. On 14.03.2020, informant received information that Shaikh Hamid is lying in one Dilkash Bar in injured condition. He was taken to hospital and while going to hospital, it was informed by Shaikh Hamid to the son that he has been assaulted by present applicant. This shows

that there is enmity between the families and while releasing the applicant on bail, it was observed by this Court that since the informant, her son - Ganesh and applicant are hailing from the same area of same town, appropriate restrictions are required to be imposed and accordingly, those restrictions were imposed. Now, there is no ground for which the said condition can be relaxed. Even on the earlier occasion Criminal Application No.2361 of 2020 was filed by the present applicant for relaxation of condition, however, on 21.01.2021 that application came to be withdrawn. There is no necessity to relax the said condition.

6. Since the entire background of the case has been already covered, it is not repeated. The most important fact to be noted is that this Court had taken note of the fact that the parties are residing from same area and, therefore, the restrictions are imposed. Now, it is the say of the applicant that he had given his daughter in adoption to his in-laws on 31.08.2020 and his mother-in-law was looking after the minor child, however, now she has expired on 10.04.2021 and it is stated that it prompted the applicant to pray for relaxation of condition. It is to be noted that when adoption is complete and according to the applicant, he has given his daughter in adoption to the parents-in-law, then the daughter of the applicant would be the daughter of the in-laws. Though the mother-in-law of the applicant has expired, the father-in-law is alive

and, therefore, he would take care of his adopted daughter. At the time of grant of bail under Section 439 of the Code of Criminal Procedure, the applicant had given undertaking that he would abide by the terms of the bail. Now, when the terms/conditions have been imposed, he should abide by it. Further, when the said condition was imposed with some purpose, then it cannot be said that the said purpose is over. The trial has not concluded. Mere delay in trial will not be the ground. It is to be noted that during the pandemic situation, the Court working hours were reduced and there were restrictions on the Court proceedings and, therefore, for delay which was not due to some human intervention cannot be utilized by the applicant to get the condition relaxed. No case is made out to relax the said condition. Application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm