

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

BAIL APPLICATION NO.96 OF 2020

Kalidas @ Jaydev S/o Rajendra Shinde,
Age :- 27 Yrs. Occu:- Labour,
R/o:- Borgaon, Tq. Kaij, Dist. Beed.

...Applicant

Versus

The State of Maharashtra,
Through Police Inspector,
Kalamb Police Station, Tq. Kalamb,
Dist : Osmanabad.

...Respondent

Ms Preeti Wankhede, Advocate for Applicant
Mr S.N. Morampalle, APP for Respondent/State

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 18th APRIL, 2022

PER COURT :

1. It is an application for bail moved by the applicant by taking aid of Section 439 of Cr.P.C in connection with Crime No. 0194/2017 registered with Kalamb Police Station, Dist. Osmanabad under Section 302 and 201 of the Indian Penal Code.
2. Heard Ms Preeti Wankhede, learned counsel for the applicant (appointed through High Court Legal Services Sub-Committee, Aurangabad) and Mr S.N. Morampalle, learned A.P.P. for the State.
3. Perused the copy of bail order passed by the Additional Sessions Judge, Osmanabad.
4. The learned counsel for the applicant submitted that there are no eye witnesses to the alleged incident of murder. The case is entirely based on

circumstantial evidence. There is no *prima facie* material against the applicant to implicate him in the alleged offence of murder and destruction of evidence. She submitted that whatever evidence collected during the course of investigation, is very much weak. The applicant is behind the bars since last five years. The charges are even not framed though five years are over. She, therefore, urged to grant bail.

5. Per contra, Mr S.N. Morampalle, learned A.P.P. strongly opposed to allow bail application. He submitted that the offences registered against the applicant are serious in nature. It is a case of murder. The applicant had illicit relations with the deceased and on account of illicit relations, the applicant had committed the murder of deceased. The Investigating Officer has recorded the statements of relatives of the deceased which are supporting to the prosecution case.

6. Having considered the submissions of learned counsel for the applicant and learned A.P.P. for the State, I have gone through the copy of F.I.R., copy of bail order passed by the Additional Sessions Judge, Osmanabad and other papers made available by learned A.P.P.

7. It is evident from the record that the applicant came to be arrested in connection with Crime No. 0194/2017 on 08.08.2017. The F.I.R. seems to have been lodged at Kalamb Police Station, Dist. Osmanabad against unknown person. The name of the applicant seems to have been revealed during the course of investigation and it is alleged that the applicant had illicit relations with the deceased and on account of illicit relations, the applicant had eliminated the deceased. Admittedly, the case is based on circumstantial evidence. There is no direct evidence to show the involvement of the applicant in connection with the

crime. Even though Section 302 of I.P.C. is levelled against the applicant which is of serious nature, the applicant cannot be kept behind the bars for such a long period without trial. It is pointed out by the learned counsel for the applicant that since last five years, the applicant is behind the bars in connection with the said crime. The Sessions Court has even not framed the charges against the applicant. As such, there are very remote chances of commencement of trial in the sessions case in near future. It is nothing but pre-trial conviction if the detention of the applicant is continued. It is a right of the applicant to have a speedy trial under Article 21 of the Constitution of India as held in case of ***Hussainara Khatoon and others Vs. Home Secretary, State of Bihar, Patna*** reported in ***AIR 1979 SC 1369***. When Article 21 provides that no person shall be deprived of his life or liberty except in accordance with the procedure established by law, it is not enough that there should be some semblance of procedure provided by law, but the procedure under which a person may be deprived of his life or liberty should be 'reasonable, fair and just.'

8. Having regard to the above reasons and looking to the remote chances of commencement of trial in the Sessions Case, it is a fit case to release the applicant on bail on certain conditions which would take care of apprehension of prosecution.

ORDER

- A) The application for Bail is hereby allowed as under :-
- (i) The applicant – Kalidas @ Jaydev S/o Rajendra Shinde in connection with Crime No. 0194/2017 (Sessions Case No. 83/2017) shall be released on P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties of like amount.

- (ii) The applicant shall remain present on each and every date before the Sessions Court, except genuine reasons.
- (iii) The applicant shall co-operate to the Sessions Court for expeditious disposal of Sessions Case.
- (iv) The applicant shall not tamper with prosecution evidence in any manner.
- (v) The applicant shall furnish his in-detail address with the concerned Court as well as the concerned Police Station.
- (vi) The bail before the Sessions Court.
- (vii) The Bail application is accordingly disposed of.
- (viii) The professional fees of the appointed learned counsel for the applicant is quantified at Rs. 5,000/-.
- (ix) The Secretary, High Court Legal Services Sub-Committee, Aurangabad is requested to make payment of professional fees to the learned counsel Ms Preeti Wankhede.

(SHRIKANT D. KULKARNI, J.)

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