

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

BAIL APPLICATION NO. 959 OF 2022

Nilesh Ishwar Gurchad @ Gurchal

Age: 31 years, Occu.: Labour,

R/o Nandgaon, Tq. Bodwad,

Dist. Jalgaon

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

WITH

BAIL APPLICATION NO. 963 OF 2022

Tejrao Bhaskarrao Patil

Age: 49 years, Occu.: Business,

R/o Near Vivekanand Hospital,

Tq. Malkapur, Dist. Buldhana,

At Present Ward No.4, Kurha,

Tq. Muktainagar, Dist. Jalgaon

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

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Mr. S.S. Jadhav, Advocate for applicant in BA/959/2022

Mr. R.S. Deshmukh, Senior Advocate a/w Mr. Vishal Chavan, Advocate i/b

Mr.B.P. Pande, Advocate for applicant in BA/963/2022

Mr. N.T. Bhagat, A.P.P. for respondent – State

Mr. B.R. Kedar, Advocate h/f Mr. V.M. Jaware, Advocate for assist to A.P.P.

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CORAM : R.G. AVACHAT, J.

RESERVED ON : 21st SEPTEMBER, 2022

PRONOUNCED ON : 11th OCTOBER, 2022

ORDER :

1. Both these applications for bail under Section 439 of Code of Criminal Procedure are being decided by this common order since they arise

from one and the same crime. The applicants have been arrested in connection with Crime No. 118 of 2020 registered with Muktainagar Police Station, Dist. Jalgaon for the offences punishable under Sections 302, 120-B and 201 of the Indian Penal Code and under Sections 4/25 of the Arms Act.

2. Heard. Perused the First Information Report ("F.I.R.") and related police papers.

3. The F.I.R. has been lodged by the brother of deceased – Dinkar Onkar Patil on 17th June, 2020. It has been averred in the F.I.R., the deceased alongwith his two friends went to sleep in the front yard of, "Dwarka Kisan Petrol Pump" at vilage Kurha, Tq. Muktainagar, Dist. Jalgaon on the night of 16th June, 2020. The deceased and his two friends were awake upto 02:30 a.m. of 17th June, 2020 as they were talking over various matters. An unknown person with his face covered, assaulted the deceased on his neck with a sharp weapon. The same was realised at daybreak. The informant, therefore, lodged F.I.R. alleging that some unknown person killed his brother for unknown reason.

4. The crime was investigated. The informant, his relations and friends of the deceased gave statements to the effect that the present applicant and the deceased were at loggerheads for a long time. The

deceased was in politics and social service as well. He was a Chairman of Panchayat Samiti for a year and member thereof for over years. The applicant used to be on the other side of the fence. He would oppose all the social and political activities of the deceased. The details thereof have been given in the supplementary statements of the informant and other witnesses. It is the case of prosecution that the present applicant and co-accused – Vilas Mahajan conspired to eliminate the deceased. They, therefore, hired one Syed Sabir Shafi to do away with the deceased. Syed Sabir and his three associates including the applicant – Nilesh, planned to kill the deceased. A recce of the site, whereat the deceased was sleeping, was made sometime before the incident. Applicant – Nilesh, post 03:00 a.m., went on motorbike and slit the throat of the deceased with a sharp weapon. All those, who were involved in the crime in question, came to be arrested.

5. Learned senior counsel for the applicant – Tejrao Patil, would submit that the case is based on circumstantial evidence. The F.I.R. was lodged against an unknown person. The informant and other witnesses gave more than two supplementary statements with improvement in their versions. Co-accused – Syed Sabir, who has allegedly been given contract and his two associates, have been granted bail by this Court. The applicants have been behind the bars for little over two years. He, therefore, urged for grant of bail.

6. Learned counsel for the applicant – Nilesh would submit that co-accused, who were allegedly given contract to kill the deceased, have been granted bail. The one, who had committed the murder, had his face covered. Except recovery of three weapons pursuant to disclosure statement allegedly made by applicant – Nilesh, there is nothing to indicate his involvement in the crime in question. Articles viz. *sura*, *chaaku* and *uchatane* came to be recovered from a well. None of those articles had blood stains to attributed them to have been used in commission of offence in question. Learned counsel, therefore, urged for grant of application.

7. Considered the submissions advanced. True, the case is based on circumstantial evidence. The applicants have been in jail for over two years. There is voluminous material to indicate that all was not well between the applicant – Tejrao Patil and the deceased. On arrest of the applicant – Tejrao Patil and co-accused - Vilas, their cell phones came to be seized. A conversation between the two recorded in their respective cell phones came to be retrieved. A transcript thereof is part of police papers. The said talks indicate that both of them had conspired to eliminate one Santosh Patil (close friend of the deceased). From the talk, it could be inferred that both of them were planning to eliminate the deceased and some more persons as well. The applicant had approached one Suman, who runs a mess. He had asked

her to lace the food with poison for the tiffin that would have been taken by Santosh Patil. It is the case of prosecution that Santosh Patil and the deceased used to take meals together. There is also statement of brother-in-law of the applicant. His statement indicates that the applicant had asked him to fetch some poisonous substance which has its deleterious effect gradually (slow poison). The same is also evident from the talks between the applicant – Tejrao and co-accused – Vilas. The conversation further indicates that the applicant had also offered Rs.1,50,000/- as a price to kill. Who was approached for that purpose, had made a demand of Rs.2,50,000/-. The Court do not propose to reproduce the transcript of the conversation. It is reiterated that the same is admissible in view of Section 10 of the Evidence Act. The same suggests the applicant and co-accused – Vilas had conspired to eliminate Santosh Patil and 2-3 other persons. They were in search of persons, who would take contract to kill their targets. As such, the prosecution has every reason to contend that the deceased was killed pursuant to the conspiracy hatched by the present applicant. The Court is, therefore, not inclined to grant the application of applicant – Tejraro Patil for the present.

8. So far as regards the case of applicant – Nilesh is concerned, he made a disclosure statement pursuant to which three sharp weapons came to be seized from a well. Since the applicant, intentionally, dropped them in the

well, those articles did not bear blood stains. An opinion of the doctor was solicited. The opinion suggests that the death might have been caused by one of the weapons seized. The incident has been captured in a C.C.T.V. footage. This Court watched the same in open Court. The killer had his face covered. A photograph of applicant – Nilesh was shown to the Court. Height and built of the killer match with the photograph of applicant - Nilesh. His involvement in the present crime, therefore, may not be ruled out. Considering the seriousness of offence and the manner in which it was committed, and the prosecution material prima facie suggesting involvement of the applicant in the present crime, the Court is not inclined to grant the application of applicant – Nilesh as well.

9. Both the bail applications are rejected. Trial Court is requested to frame the charge, if not already framed, within a period of one month from the date of receipt of copy of this order and conclude the same preferably within nine months thereafter. Both the applicants may revive their claim for bail, if trial could not be concluded within a period of ten months.

(R.G. AVACHAT, J.)

SSD