

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

BAIL APPLICATION NO. 1425 OF 2022

Jaymalsingh Harambsingh Dhariwal

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. S.S. Gangakhedkar, Advocate for applicant
Mr. A.V. Deshmukh, A.P.P. for respondent - State
....

CORAM : R.G. AVACHAT, J.

DATE : 07th OCTOBER, 2022

PER COURT :

1. This is an application for bail under Section 439 of Code of Criminal Procedure. The applicant has been arrested in connection with Crime No. 49 of 2022 registered with Vazirabad Police Station, Dist. Nanded for the offences punishable under Sections 302 and 201 of the Indian Penal Code and under Section 4/25 of the Arms Act, 1955.

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

3. The F.I.R. has been lodged by brother of Veersingh (deceased) on 21st February, 2022. It is averred in the F.I.R. that the deceased was

unmarried. He would do labour work to earn his living. A Medical Officer from Vishnupuri Government Hospital made a phone call to the informant on 16th February, 2022 by 09:00 a.m. and informed that Veersingh received stab injuries in his stomach and chest as well and was, therefore, admitted to the hospital. The informant, therefore, went to the hospital to find Veersingh in injured state. On enquiry with the Medical Officer, the informant learnt that a person claiming to be one Harvindersingh admitted Veersingh to the hospital. He gave history that Veersingh attempted to commit suicide. The person claiming Harvindersingh gave his cell phone number as 8208104417. It is also the case of prosecution that he realised that the said cell phone number belongs to the present applicant. Veersingh gained some consciousness in the evening. The informant, therefore, enquired with him as to how did he suffer injuries. Veersingh was unable to talk a lot. The informant, therefore, gave him cellphone and asked to type name of the assailant. He, thereupon typed the words, "GG". The informant, therefore, asked Veersingh as to whether Ganga had assaulted him. Veersingh made gestures that Ganga made him consume liquor and then assaulted with *khanjar*. Veersingh could not talk anything more. The informant, therefore, made enquiry with Akash and Gurubaksh Gadiwale, residents of Naginaghat to learn from them that both, the applicant and Veersingh had been at Ghodesab, Naginaghat Road by 09:30 p.m. on 15th February, 2022. The applicant made Veersingh drink liquor. The applicant then stabbed Veersingh with *khanjar* for the reason that

Veersingh would talk with the sister of the applicant. The informant, therefore, went to Ghodesab to find motorcycle of Veersingh there.

4. It has been averred in the F.I.R. that since no one was there to look after Veersingh, the F.I.R. has been lodged five days after the alleged incident, i.e. after Veersingh passed away. The applicant came to be arrested. He made a disclosure statement pursuant to which a *khanjar* came to be seized from the house of one lady. He also informed that blood stained clothes on his person were burned by him to ashes. Statements of Gurubaskh and others residing at Naginaghat were recorded. On investigation, the charge-sheet has been filed.

5. Learned counsel for the applicant would submit that there is delay of five days in lodging of F.I.R. Same suggests the F.I.R. to have been lodged afterthought. The cell phone number 8208104417 did not belong to the applicant. Statement of Gurubaksh is unreliable. He claims to have seen the applicant gave 2-4 stabs to Veersingh. The applicant was heavily drunk. He then took Veersingh on his motorcycle and left the place. Even after having seen the incident, he did not inform the police or relations of Veersingh. Learned counsel, therefore, urged for grant of relief to the applicant.

6. Learned A.P.P. would, on the other hand, submit that the applicant had a strong motive to commit murder of Veersingh. The delay in

lodging the F.I.R. has properly been explained. There is an eye witness account as well. The offence is serious one. He, therefore, urged for rejection of the application.

7. Considered the submissions advanced. The deceased was assaulted on 15th February, 2022 by 09:30 p.m. at Ghodesab. Gurubaksh, who had claimed to have had witnessed the incident, did not come forward to lodge the report with police or inform the relations of the deceased – Veerisngh for five days next after the incident. The statement indicates that he did not intervene in the quarrel since the applicant was heavily drunk. He thought the applicant may also assault him. Learned counsel for the applicant has reason to contend that when the applicant was heavily drunk, was it possible for him to carry the injured (who has suffered four stabs on his chest and stomach) on motorcycle and admit to the hospital.

8. The applicant has been named in the F.I.R. based on oral dying declaration made by the deceased. The deceased named the applicant with initial letters of his name (GG – Ganga). Rest of the communication was made by the deceased with gestures. When identity of the applicant was allegedly disclosed on 16th February, 2022 itself, the F.I.R. has been lodged five days thereafter. On investigation, the charge-sheet has been filed. It will take time for commencement and conclusion of trial. In these facts and circumstances of the case, the Court is inclined to grant the applicant bail.

9. In view of above, the application deserves to be allowed. Hence I pass the following order :-

ORDER

(I) The bail application is allowed.

(II) The applicant be released on bail, in connection with Crime No. 49 of 2022 registered with Vazirabad Police Station, Dist. Nanded for the offences punishable under Sections 302 and 201 of the Indian Penal Code and under Section 4/25 of the Arms Act, 1955, on executing P.R. Bond in the sum of Rs.40,000/- (Rupees Forty Thousand) with one surety in the like amount.

(III) The applicant shall not enter Nanded Taluka for next twelve months, except for attending Court matters.

(IV) The applicant shall not tamper with the prosecution evidence.

(R.G. AVACHAT, J.)

SSD