

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

912 BAIL APPLICATION NO.1659 OF 2021

**AKRAM KHAN GAYAZ KHAN
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr. Bhosle Abhaysinh K.
APP for Respondent : Mr. S.W. Mundhe.

**CORAM : MANGESH S. PATIL, J.
DATE : 26.02.2022.**

PER COURT :

This is a successive application for bail under Section 439 of the Code of Criminal Procedure in connection with Crime No. 302/2017, registered with Cantonment (Chavani) Police Station, Aurangabad, for the offences punishable under Section 302, 201, 120B read with Section 34 of the Indian Penal Code

2. Being alive to the fact that this is a successive application for bail having its own limitations not only for claiming the bail but also for the Court to decide the application, the learned advocate Mr. Bhosale for the applicant submits that though the offence is serious and punishable with capital punishment, there are certain circumstances which would demonstrate that those have undergone material change since rejection of his earlier application by the order dated 12.02.2019.

3. Learned advocate Mr. Bhosale would submit that apart from the fact that three years have elapsed since rejection of the earlier application for bail even the trial has not commenced. The Supreme Court consistently expressed the views regarding preconviction. Most of the other accused against whom the charge is graver have been subsequently released on bail by this court. Therefore, the ground of parity which was not earlier available

is also a change in circumstance.

4. The learned A.P.P. opposes the application. He submits that the offence is serious. The victim was eliminated by hatching a conspiracy. The applicant had played a vital role in carrying out the execution. Merely because subsequently the other accused have been released that cannot be a ground to reconsider the request, more so when this court had granted bail to the other accused for the reasons mentioned in the order passed in their favour without adverting to the reasoning given by this Court while rejecting the applicant's request for bail.

5. In addition, the learned A.P.P. points out that while being in the custody, taking advantage of the fact that he was being taken for vaccination, he made good his escape from the custody and was arrested after five to six months. According to the learned A.P.P. this is a vital circumstance which clearly indicates that the applicant has no fear of law and there is every possibility of his jumping the bail once released.

6. As is fairly conceded by the learned advocate Mr. Bhosale, there are inherent limitations in reconsidering the request of applicant for grant of bail once his request has been turned down on merits for the reasons detailed in the order dated 12.02.2019.

7. As far as the period the applicant has been behind the bars, true it is that he has been in jail since the date of his arrest on 03.03.2018, except for the intervening period of five to six months when he was absconding. Taking into account the nature of crime which is punishable up to death, the period which he has already undergone in jail can hardly be said to be a material change in circumstance since rejection of his earlier application.

8. In this regard, it is also important rather imperative to note that the applicant has even taken liberty by jumping the custody when he was being taken for vaccination. Therefore, he cannot be allowed to hear for being

behind the bars.

9. This circumstance further indicates that his conduct is such that he does not deserve any leniency. In spite of being behind the bars in a serious crime, he was bold enough and even succeeded to escape and had to be traced and arrested after five to six months. This clearly indicates that if he is released on bail, there is every likelihood of his jumping the conditions of the bail. For this reason alone, in my considered view, his request is liable to be turned down.

10. True it is that few other accused who are similarly placed have been granted bail by this Court for the reasons mentioned in those individual orders. However, when the request of the applicant was already considered on merits and his application was rejected with detailed reasons which have not been squarely put forth and met in the orders granting bail to the other accused persons, he is not entitled to claim any parity.

11. Again, once request for bail having been rejected by this Court on merits, it would not be a material change in circumstance if subsequently some other accused are released on bail. In my considered view, this cannot be a material change in circumstance which should now weigh with the Court when the earlier application has been rejected on merits.

12. Though it is not necessary, it is important to bear in mind the grounds mentioned in the order dated 12.02.2019 whereby the application of the applicant was rejected. These grounds would still continue to hold the ground.

13. The application is rejected.

(MANGESH S. PATIL, J.)

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