

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.392 OF 2020

(SANDIP SUDHAKAR TOTE...VS.. STATE OF MAH. THR. PSO PS DARWHA, DIST. YAVATMAL)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Anil S. Mardikar, Sr. Adv. a/b. Shri D.I.Jain, Advocate for Applicant.
Ms Mrunal Barabde, A.P.P. for Non-applicant/State.
Shri Atharva S. Manohar, Advocate to assist prosecution

CORAM : ANIL S. KILOR, J.
DATED : JUNE 17, 2022.

1. Heard.
2. This is an application under Section 439 of the Code of Criminal Procedure for grant of regular bail in connection with Crime No.638 of 2018, registered with Police Station, Darwha, District: Yavatmal for the offences punishable under Sections 302, 307, 143, 147, 148, 149, 504, 506 of the Indian Penal Code and Section 135 of the Maharashtra Police Act.
3. The learned Senior Advocate for the applicant submits that in this case custody of the applicant is no more required as after completion of the investigation charge sheet has been filed on 10/01/2019, whereas, the applicant is in jail from 14/10/2018 for about 4 years. It is submitted that there is no progress in the trial and even charge is not framed till date.

4. Shri Mardikar, learned Senior Advocate further submits that all other accused persons have already been released on bail. He lastly argues that he is ready to abide by any condition if imposed by this Court while granting bail.

5. The learned A.P.P. strongly opposed the application and submits that the applicant who is main accused has brutally murdered the deceased. She submits that there are criminal antecedents and four offences are pending against the present applicant. Accordingly, she prays for rejection of the present application.

6. Shri Atharva Manohar, learned counsel, who is assisting the prosecution on behalf of the complainant, strongly opposed the application. He submits that the offence is very serious and looking to the antecedents, the applicant shall not be released on bail.

7. I have perused the charge-sheet and the reply filed by the State.

8. It can be seen from the charge-sheet that the applicant is in jail from 14/10/2018 i.e. for about 4 years. There is no progress in the trial and even the charge is not framed. One of the reason for no progress in the trial is that Division Bench of this Court vide order dated 21/06/2019 passed in Criminal Application No.1185 of 2018 directed to keep the sessions trial in abeyance till

next date. The said Criminal Application came to be disposed of on 08/03/2022. As such, the said order directing to keep the sessions trial in abeyance was in operation till March 2022.

9. In this case, after completion of the investigation the charge-sheet has been filed on 10/01/2019 and as such further custody of the applicant is no more required. Thus, from the above referred backdrop it can be seen that there is no possibility that the trial will commence in near future. Even if it commences it will take a long time to conclude. Thus, according to me, there is no point in keeping the applicant in jail for uncertain period.

10. As far as merit is concerned, there was delay in lodging the report and the learned Senior Advocate for the applicant has tried to point out lacunae in the investigation. However, at this stage, I am of the opinion that as the applicant is in jail for last four years and as there is no progress in the trial, moreover, the custody of the applicant is no more required, the applicant should be released on bail by putting some stringent conditions. Accordingly, I pass the following order:

- i) The application is allowed.
- ii) It is directed that the applicant shall be released on bail in connection with Crime No.638 of 2018, registered with Police Station, Darwha, District: Yavatmal for the offences punishable

under Sections 302, 307, 143, 147, 148, 149, 504, 506 of the Indian Penal Code and Section 135 of the Maharashtra Police Act on furnishing P.R. Bond in the sum of Rupees Twenty Five Thousand with one solvent surety in the like amount.

- iii) The applicant shall not pressurize the prosecution witnesses or tamper with the prosecution evidence.
- iii) The applicant shall not enter the vicinity of Darwha, District: Yavatmal till conclusion of the trial, except for the trial.
- iv) The applicant shall attend the trial before the Sessions Court regularly on every date unless exemption is granted by the Sessions Court.
- v) Liberty is granted to the State to move an application for cancellation of bail in case of commission of any breach or heinous crime after release of the applicant on bail.

The Criminal Application is **disposed of** accordingly.

JUDGE