

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

BAIL APPLICATION NO. 682 OF 2023

Dinanath S/o. Pralhad Oname

Versus

The State of Maharashtra.

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Mr. Rajendra Deshmukh, Senior Advocate alongwith Mr. Vishal A. Chavan, i/b. Mr. P.P. More, Advocate for applicant.
Mr. K.S. Patil, APP for State.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 14th SEPTEMBER, 2023

ORDER :-

The applicant seeks regular bail in connection with Crime Number 150 of 2019 registered with Shirur-Anantpal Police Station, Dist. Latur for the offences punishable under Sections 302, 307, 143, 147, 148, 149, 504 of IPC and Section 135 of Maharashtra Police Act.

2. The investigation was set in motion on the basis of the information given by Namdeo Subhash Sude. The informant states that he holds agricultural land in Survey No.17 at village Kalandi. Satyawar Oname is the adjacent land holder. The dispute regarding the cart-way

is pending between him and said Satyawar in the Court since last two years. It is further alleged that on 3rd October, 2019 at about 7.00 p.m., while the informant alongwith his family members were present in the field, the accused persons arrived on the spot. They were holding weapons like wooden logs, axe, sickle etc. They were insisting that the complaint lodged against them in police station be withdrawn. They apprehended and abused the informant and his family members. Thereafter, they started assault on the informant and family members. It is alleged that accused Dnyanoba assaulted him on the head using the axe. He was fainted. After regaining consciousness, he found that his father was seriously injured and he had suffered the injuries on head, legs and ear. Immediately, he gave a call to police. They took injured father in a tractor. However, his father/Subhash Sude lost his life and other relatives had suffered injuries. Accordingly, it is stated that the accused persons have committed murder of father of the informant and caused serious injuries to others. Based on aforesaid information, offence came to be registered against the accused persons.

3. Another injured from same incident, namely, Dayanand has also lost his life on account of assault at the hands of accused persons.

4. The supplementary statement of informant Namdeo has been recorded on 14.10.2019. He states that because of injuries suffered by him, he could not narrate the entire incident while recording his statement dated 3.10.2019. He states that the accused persons had suddenly attacked his family members. Accused Dnyanoba Oname and Jagannath Oname assaulted his father i.e. Subhash Sude using the axe and sickle. Accused Dnyanoba gave a blow using axe on the head of the

deceased Subhash whereas, Jagannath assaulted on his hands and legs using the sickle. He further states that accused Dinanath (present applicant) assaulted on the head of Danayand using axe and accused Rajkumar gave blows using the axe. There is further elaboration regarding role of the other accused persons. During the course of investigation, the statements of other injured witnesses are recorded. The medical evidence corroborates with the allegations in the FIR and supplementary statement. Two persons from the family of the informant lost their lives. The investigation progressed. The accused persons are arrested. The applicant had moved his application for grant of bail before the Sessions Court after filing of charge sheet. It was rejected considering the statement of the witnesses. The applicant had approached this Court vide Bail Application No. 962 of 2021. However, he withdrew said application on 21.10.2022, on disinclination of Court to grant the relief. However, the applicant was permitted to apply afresh if trial does not conclude within a period of one year. In pursuance of the aforesaid liberty, the applicant had moved I.A. No. 10 of 2023 in Sessions Case No. 2 of 2020 before the Additional Sessions Judge at Nilanga and reiterated his prayer for grant of bail. However, the learned Sessions Judge vide order dated 23.1.2023 rejected the prayer of the applicant. Hence, the present application for grant of bail.

5. Mr. Rajendra Deshmukh, learned Senior Advocate appearing for the applicant would submit that though this is a successive bail application before this Court, earlier application filed by the applicant was withdrawn. There is no adjudication on merit. Further, a specific liberty has been granted in favour of the applicant to reiterate the prayer in case the trial prolongs beyond one year.

6. Mr. Deshmukh would further submit that the FIR has been lodged at the instance of the injured Namdeo Sude on 3.10.2019. He would submit that no role is attributed against the applicant regarding the assault on the informant. Even there is no narration regarding any other role of applicant in the incident in question. He would submit that only by way of supplementary statement of the informant, recorded on 14.10.2019, the role has been attributed against the applicant that he was holding the axe and inflicted blow on the head of Dayanand Sude i.e. grandfather of the informant, using the axe. The learned Senior Counsel would, therefore, submit that the improvised version has been introduced after 11 days of the incident. He would further point out that there is no recovery of weapon at the instance of the applicant during the course of investigation. The clothes recovered do not show presence of blood stains. The Chemical Analyzer's report is negative. Axe has been recovered from another accused. It bears no blood stains. The learned Senior Counsel would further point out that the prosecution relies upon in all 38 witnesses. There is no progress in the trial after 25.10.2021 when the earlier bail application of the applicant was withdrawn with liberty. The learned Senior Counsel would also point out that out of total 15, six accused persons are granted bail. Even accused Dnyanoba is granted bail, from whom the axe has been recovered. He would further submit that the applicant is behind bars since date of arrest i.e. 4.10.2019. The learned Senior counsel also invites attention of this court to the fact that the applicant was hardly 21 years of age and he was prosecuting studies at the relevant time. He has lost about 4 years behind bars. The learned counsel relies upon the judgment of this Court in (*Sachin Atmaram Vartak vs. State of Maharashtra*) Bail Application No. 430 of 2021 to urge that the trial is proceeding with snail speed and

showing no progress. The prolonged custody infringes right guaranteed under Article 21 of the Constitution of India. In such cases, the Courts are required to balance constitutional rights of individuals.

7. Per contra, learned APP submits that this is a case of double murder. The accused persons gathered in the field holding deadly weapons in their hand. The unlawful assembly of about 15 accused persons have brutally attacked the informant and his family members. Two of them lost their lives and others were injured. He would submit that the incident was reported on 3.10.2019 when the informant was seriously injured, his statement was recorded in the hospital. Therefore, the detailed version regarding the incident is not appearing in the FIR. He would point that the applicant is named in the FIR and there is statement that all the accused persons were holding weapon in their hand. The informant has given narration regarding assault on him and death of his father in the assault. In his supplementary statement dated 14.10.2019. He has specified role of the applicant in causing injury on head of Danayanad i.e. grandfather of the informant. The learned APP would also invite attention of this Court to the medical evidence on record which is in consonance with the narration given in the FIR as well as the supplementary statement. He would further submit that there are injured eye witnesses whose statements highlights the role of the applicant. The evidence available in the charge sheet clearly depicts participation and role of the applicant. Dayanand lost his life because of the fatal assault by the applicant using the axe. The learned APP would point out that the eye witnesses Namdeo, Balaji and Raju have clearly named the applicant and explained his role. By inviting attention of this Court to Column No. 17 of Post Mortem notes in respect of deceased

Dayanand, he would point out that the injury on parietal region corresponds to the assault by the applicant. The learned APP submits that charge is already framed. The trial has been delayed because of the cross-complaint filed on behalf of the accused persons in which "B" Summary report was filed. However, subsequently further investigation was directed and the criminal case is registered as such, there are counter cases in relation to one and the same incident, which requires to be tried together. The order issuing process in cross complaint was subjected to challenge before the Sessions Court. Now, the revision application is also dismissed. As such, both the cases can be tried together. He would submit that at this stage the release of the applicant may hamper smooth trial and also have adverse impact on morale of the witnesses.

8. Having considered the submissions advanced, apparently, it is a case of double murder. As many as 15 accused persons have participated in the the brutal attack. Apart from two deaths, there are injured witnesses. The FIR clearly names the aplicant as person present at the time of incident. The supplementary statement of the informant records the detailed role played by each and every accused. The applicant has been specifically attributed with the role in causing injury to Dayanand. The statements of 3 eye witnesses suggests that the applicant had axe in his hand and he inflicted blow on head of Dayanand. The post mortem report clearly shows head injury which can be attributed to weapon used by the applicant and assault made by him. Although recovery of the axe is made from other accused persons or the C.A. report does not show blood stains on the clothes of the applicant, the ocular evidence available on record is sufficient to prima facie hold that the applicant has played a vital role in commission of murder. It is a matter

of record that charge under Section 149 has been invoked in the present case. There are two deaths and injuries to the eye witnesses. The vicarious liability of each of the participant as regards the injuries and death can not be ruled out. The earlier bail application of the applicant was withdrawn when this court had shown disinclination to entertain the application. In that view of the matter, on merits, there is no case to grant bail.

9. The second submission advanced on behalf of the accused is that trial could not proceed for last more than 4 years. Only charge is framed. As such, the incarceration of the applicant would not be necessary.

10. It is true that the Supreme Court of India in various pronouncements considered the importance of speedy trial and given wide meaning to the term "Life and Liberty" enshrined under Article 21 of the Constitution of India. The right to speedy trial is considered to be encompassed within the meaning of Article 21. In the present case, the applicant is behind bars since last 4 years and there is possibility that trial would take further six months to one year till conclusion. However, the learned Sessions Judge while rejecting the similar contention of the applicant recorded elaborate reasons for the delay in commencement of the trial. Because of the counter complaint, it was hurdled. Recently, impediment is removed in view of the order passed by the Sessions Court maintaining the order issuing process in cross complaint. Secondly, a heinous offence of murder is alleged against the applicant. Two persons have lost their lives and others were injured in the incident. The accused persons and victims are from the same village. Release of the applicant

at such a crucial stage is likely to hamper smooth prosecution. Possibility of tempering with the evidence and generating threats to the witnesses by the applicant cannot be ruled out. Resultantly, there is no merit in the application. Hence, the application stands rejected.

[S.G. CHAPALGAONKAR]
JUDGE

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