

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 2104 OF 2022

Harish S/o Baburao Mirekar,
Age : 21 years, Occu. Business,
R/o Sanjiv Nagar, Link Road,
Ambad, Tq. & Dist. Nashik

.. Applicant

Versus

The State of Maharashtra,
Through Police Station Officer,
Police Station, Tq. Sengaon,
Dist. Hingoli

.. Respondent

...
Advocate for the applicant : Mr. Hanmant V. Patil
APP for the respondent – State : Mr. V.S. Badakh
...

CORAM : MANGESH S. PATIL, J.

DATE : 19 APRIL 2023

ORAL ORDER :

This is an application under section 439 of the Code of Criminal Procedure by the applicant who happens to be accused no. 3 in crime no. 5 of 2018 registered with Songaon Police Station, District Hingoli for the offence punishable under section 302, 364, 201, 120B, r/w. 34 of the Indian Penal Code.

2. In sum and substance, the allegations being levelled by the prosecution are to the effect that there was long standing civil dispute between the main accused no. 1 – Haribhau and the deceased who was his brother in law. By hatching a conspiracy and by giving a

contract to the present applicant and the other three accused – Imran, Subramnya and Vijay, the deceased was eliminated.

3. Already applicant's application which was a joint application along with accused no. 5 - Subramnya was dismissed as withdrawn when this Court had expressed its disinclination to grant the bail on merits.

4. The learned advocate for the applicant submits that main co-accused, namely, Haribhau, Ratan and even Imran have been granted bail by this Court. On the ground of parity, apart from anything else, the applicant is entitled to be released on bail.

5. Learned advocate also points out that the role attributed to accused no. 4 – Imran and to the present applicant is exactly the same; rather Imran is alleged to have throttled the deceased whereas applicant is merely stated to be accompanying Imran and they together with couple of other accused had stayed in a lodge. He would also submit that though the applicant has been identified in test identification parade, same is the case with Imran. In such a scenario, keeping the applicant behind the bars would not serve any purpose and he may be granted bail.

6. The learned A.P.P. strongly opposes the application. At the outset, he submits that the trial has commenced and couple of

witnesses have already been examined. That was not the case when this Court granted bail to accused no. 4 - Imran. Accused no. 1 – Haribhau and accused no. 2 – Ratan were granted bail even before the applicant's earlier application was rejected. He would also submit that there is no reference to the rejection of applicant's application in the order of bail passed in favour of accused no. 4 – Imran.

7. I have carefully considered the rival submissions and perused the papers.

8. It is a matter of record that accused no. 1 – Haribhau and accused no. 2 – Ratan were granted bail even before applicant's similar application was withdrawn after hearing the arguments and when this Court had expressed disinclination to grant bail on merits.

9. True it is that the accused no. 4 – Imran who has been identified during the test identification parade, has been granted bail by this Court but conspicuously there is no reference about rejection of application of the applicant.

10. Be that as it may, this Court after hearing had declined to grant bail and it is thereafter the applicant had withdrawn his application. The only change in circumstance in the facts and circumstances would be the fact of grant of bail to accused no. 4 - Imran. As is being submitted by the learned A.P.P. the trial had not

commenced when this Court granted bail to accused no. 4 – Imran by order dated 04-05-2022. Now couple of witnesses have already been examined.

11. In my considered view, the applicant is not entitled to bail.

12. The application is rejected.

[MANGESH S. PATIL]
JUDGE

arp/