



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

BAIL APPLICATION NO.2170 OF 2023

Hemant Dnyaneshwar Chaudhari

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr. Satej S. Jadhav Advocate for Applicant.
Mr. V.M. Jaware, A.P.P. for Respondent-State.

...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 20th FEBRUARY, 2024

ORDER :

1. Present Application has been filed under Section 439 of the Code of Criminal Procedure. The applicant, who is original accused No.2, came to be arrested on 22nd July 2021 in connection with Crime No.76 of 2021 registered with Soygaon Police Station, District-Aurangabad, for the offence punishable under Section 302, 307, 341, 324, 504, 506 read with Section 34 of the Indian Penal Code.

2. Earlier application filed by the applicant i.e. Bail Application No.1193 of 2021 came to be withdrawn by the applicant vide order dated 22nd October 2021, with liberty to file application before the trial Court for regular bail since charge-sheet came to be filed. Thereafter the applicant again approached this Court by filing Bail Application No.1703 of 2021. Again the applicant had withdrawn the said Application with liberty to approach the same Court after the Mobile which was seized in the matter wherein the entire incident has been recorded, was returned by the Forensic Laboratory with the report. At that time this Court had given direction to the learned APP on 1st March 2022 to produce the transcript of the video, but on 14th March 2022 the learned APP has made a statement that the transcript cannot be produced as the Mobile has been sent to Chemical Analyzer for analysis. Now again present applicant is before this Court.

3. Heard learned Advocate Mr. Jadhav for the applicant and learned APP Mr. Jaware for respondent- State. Perused the impugned orders and also the communication by the trial Court regarding the status report. Surprisingly, the trial Court says that the Advocate for accused No.1 has filed an application to call Investigating Officer in respect of Mobile of the accused seized by him during investigation. This Court is unable to understand

what kind of procedure is adopted, which appears to be not contemplated under the Code of Criminal Procedure. When the charge-sheet is produced, the Court should adhere to the steps given in the Code of Criminal Procedure. It is specifically mentioned in the said communication that the charge is not yet framed. Thus, though the applicant, who is 21 years boy, came to be arrested on 22nd July 2021 and the charge-sheet has been filed on 11th October 2021, yet even the charge has not been framed. This is in fact sufficient to grant bail to the applicant. He need not be kept behind the bars for indefinite period.

4. Learned APP strongly opposed the application contending that there are eye witnesses and the case is not depending on the video recording. If this is a situation, then why the prosecution has not gone ahead with the trial. The prosecution need not then wait for the Mobile to be analyzed by the Chemical Analyzer. Perusal of the statements of the witnesses, especially the eye witness Sandeep would show that the applicant was present and he makes a statement that both the accused had assaulted the deceased Sunil by scythe. However, only one scythe appears to have been recovered, that too from accused No.1. The statement of witness Manisha, who is the widow of deceased Sunil, would show that the present applicant had not

used any weapon though it is stated that he had participated in the commission of the crime. Under the said circumstance, case is made out for release of the applicant on bail, with conditions. Hence, following order:-

ORDER

(I) The Application stands allowed.

(II) The applicant – Hemant Dnyaneshwar Chaudhari, who has been arrested in connection with Crime No.76 of 2021 registered with Soygaon Police Station, District-Aurangabad, for the offence punishable under Section 302, 307, 341, 324, 504, 506 read with Section 34 of the Indian Penal Code, be released on bail on PR Bond of Rs.50,000/- (Rupees Fifty Thousand) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand) each.

(III) The applicant shall not tamper with the evidence of the prosecution nor shall indulge in any criminal activity.

(IV) The applicant shall not enter the jurisdiction of "Soygaon Taluka", District-Aurangabad till the conclusion of the trial. Applicant should reside elsewhere, and before submission of bail

papers, he should give complete address of his proposed residence with his Mobile number to the Sessions Court as well as to the Investigating Officer. So also the applicant should comply with the requirements set out in Paragraph Nos. 12(1) to (6) of Chapter-I of the Criminal Manual, whichever are applicable.

(V) Bail before the trial Court.

[SMT. VIBHA KANKANWADI , J.]

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