



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.270 OF 2024
(Pandhari Deoba Gaikwad Vs. The State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. M.N. Ali, Advocate for the applicant.
Ms Prabhu, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- APRIL 15, 2024.

By preferring this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure. The applicant came to be arrested on 01/09/2020 in connection with Crime No.237/2020 registered with Police Station Shirpur, District Washim for the offence punishable under Sections 302, 201, 120-B read with Section 34 of the Indian Penal Code and Sections 4 and 25 of the Arms Act, 1959.

2. Learned Counsel for the applicant submitted that the accusation against the present applicant is on the basis of report lodged by Bhagwat Kailas Gaikwad alleging that his father was Sarpanch of village Dudhala, Taluka Malegaon, District Washim. From last four years, from the forest department the work of planting the trees was going on, and therefore, his father on intervals used to stay at Risod. In the month of June, present applicant have restrained the way of the villagers and on that his

father asked him to open the road, and therefore, present applicant was having grudge against the deceased.

3. It is alleged that on 31/08/2020 at about 9.00 a.m. the informant has seen present applicant and other co-accused together near the maroti temple. At about 12.00 p.m. his father had been to the market on his motorcycle along with the present applicant. Present applicant went along with his father on his own vehicle and thereafter his father did not turned up at home and on the next day the dead body of his father was found on whose person there were injuries. On the basis of said report, police have registered the crime against the present applicant and other two co-accused.

4. It is submitted by the learned Counsel for the applicant except the evidence of the last seen and the seizure of the clothes there is no other material to connect the present applicant. There is a long gap between the fact that the deceased was last seen with the present applicant. No other evidence is collected by the Investigating Officer. The other two co-accused against whom similar allegations are levelled are already released on bail by this Court. Thus, on the ground of parity also present applicant is entitled to be released on bail. He further submitted that since the date of arrest, the applicant is behind bar. There is no substantial progress in the trial. Further incarceration of the present applicant is not useful for the prosecution also. In view of that, he be released on bail.

5. Learned Additional Public Prosecutor strongly opposed the application on the ground that besides the last seen evidence, the cloths of the present applicant are recovered at his instance which shows that one button of the shirt of the present applicant was missing. The spot panchnama shows that one white colour button was found at the spot of incident which connects the present applicant with the alleged offence. She submitted that considering the entire case is based on circumstantial evidence, the circumstance like last seen, there is previous enmity between the deceased and the present applicant. The finding of the white colour button at the spot of incident and missing of the button of the shirt of the present applicant which was seized at his instance, sufficiently connects him with the alleged offence. Considering the *prima facie* material against the present applicant, bail application deserves to be rejected.

6. I have heard learned Counsel for both the parties. Perused the investigation papers. As far as the previous enmity is concerned, it is alleged that the applicant has restrained the way which was passing through E-class agriculture field owned by the present applicant and the deceased has asked him to open the said road, and therefore, there was a dispute. It is further alleged that the present applicant along with the other co-accused was seen by the informant on 31/08/2020 and on the day of incident, present applicant and deceased had been to the market at Shirpur and thereafter deceased

was not seen alive. Admittedly, the dead body of the deceased was found on the next day. Thus, there is a long gap between the two fact i.e. present applicant was lastly seen with the deceased and finding of the dead body. The clothes of the present applicant are also seized at his instance during the investigation. On seizure of the clothes, it is observed by the Investigating Officer that the shirt which was seen at the instance of the present applicant was not having fourth number button. One button was also seized from the spot of incident. Thus, entire case is rested on the circumstantial evidence. It is well settled that when case is rested on circumstantial evidence, prosecution is under obligation to prove all the circumstances which unerringly points out towards the guilt of the accused. As far as the material regarding the last seen is concerned, there is a time gap between the last seen with the deceased and the finding of the dead body. Thus, the intervention of the third person cannot be ruled out. The two co-accused against whom similar allegations are levelled, moreover the co-accused at whose instance the weapon of the offence is seized is also released on bail.

7. The knife was recovered from the co-accused Haribhau. On the basis of his statement under Section 27 of the Indian Evidence Act. Thus, considering the entire material on record the three circumstances which are against the present applicant. Admittedly, the incriminating weapon is not recovered at the instance of

the present applicant. The weapon is recovered at the instance of the co-accused who is already released on bail. Thus, considering similar role attributed to the co-accused who are released on bail. In view of that, the ground of parity is available to the present applicant. Now, considering the fact that the applicant is behind bar since 01/09/2020, there is no substantial progress in the trial. The nature of the evidence is also circumstantial in nature. In the light of the above facts and circumstances, further incarceration of the present applicant is not required. Accordingly, the application of the present applicant deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant – Pandhari Deoba Gaikwad in connection with Crime No.237/2020 registered with Police Station Shirpur, District Washim for the offence punishable under Sections 302, 201, 120-B read with Section 34 of the Indian Penal Code and Sections 4 and 25 of the Arms Act, 1959, be released on bail on his executing a P.R.Bond in the sum of Rs.30,000/- with one or more sureties of the like amount.

(iii) The applicant shall not enter into the vicinity of Dudhala, Taluka Malegaon, District

Washim till culmination of the trial.

(iv) The applicant shall attend the proceeding before the Sessions Court without seeking any exemption unless there are exceptional circumstances.

(v) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

8. The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*