



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

CRIMINAL APPLICATION (BA) NO.257 OF 2024

(Mukhtar Beg s/o Hamza Beg Vs. 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. T.U. Tathod, Advocate for the applicant.
Mr. A.G. Mate, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JULY 18, 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 15/08/2023 in connection with Crime No.535/2023 registered with Police Station Warud, District Amravati for the offence punishable under Sections 302, 364, 397, 201, 120-B read with Section 34 of the Indian Penal Code.

2. The informant Syed Mohammad Samir Ali is an owner of a truck bearing registration No.MH-40-Y-0903. It is alleged that on 07/08/2023 the informant has employed Mehboob Khan as a driver on his truck. Mehboob Khan was assigned with a duty to transport 25 tons Gram at Gayatri Agro Industries, Kalamna, Nagpur worth of Rs.13,75,000/-. It is alleged that the present applicant and the other accused hatched the conspiracy to rob the goods accordingly the co-accused ran away with the truck. In the meantime, a dispute arose between them and the co-accused committed the murder of accused No.3 and thrown his dead body in a Jungle.

3. Learned Counsel for the applicant submitted that the entire case is rested on circumstantial evidence except the CDR report and recovery of the mobile phone of the deceased and GPS system which allegedly installed in the truck. There is no other material to connect the present applicant with the alleged offence. He submitted that now investigation is completed and charge-sheet is filed, further incarceration of the applicant is not required. In view of that, the applicant be released on bail.

4. Learned Additional Public Prosecutor strongly opposed the application on the ground that during investigation the Investigating Officer has recovered the mobile phone of the deceased and the GPS system at the instance of the present applicant. The CDR report shows that there was a communication between the present applicant and the deceased prior to the incident. Thus, *prima facie* case is made out against the present applicant. In view of that, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the investigation papers from which it reveals that the deceased was working as a Driver with the informant. On the day of incident, he was taking his truck towards the Kalamna, Nagpur for delivering the goods. It is alleged that he as well as the present applicant and another co-accused hatched the conspiracy to misappropriate the said goods but the dispute arose between them, and therefore, they have committed the

murder of accused No.3 who was a Driver. The prosecution relied upon the CDR report which shows that there was call between the deceased and the present applicant. The prosecution also relying upon the recovery of the mobile phone and the GPS system at the instance of the present applicant. Admittedly, the investigation as to the ownership of the said mobile phone is not carried out by the investigating agency. As far as the GPS is concerned, there is no material to show that said GPS was installed in the said truck. Merely on the basis of CDR, the Prosecution alleging the involvement of the present applicant in the alleged incident. Admittedly, at this stage, the assessment of the evidence is not required but considering the entire case is rested on the circumstantial evidence, the prosecution has to establish all the circumstances which unerringly points out towards the guilt of the accused. Considering now investigation is already completed and charge-sheet is filed and considering the nature of the evidence, further incarceration of the applicant is not required. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) The applicant – Mukhtar Beg s/o Hamza Beg in connection with Crime No.535/2023 registered with Police Station Warud, District Amravati for the offence

punishable under Sections 302, 364, 397, 201, 120-B read with Section 34 of the Indian Penal Code, be released on bail on executing a P.R.Bond in the sum of Rs.25,000/- with one solvent surety, in the like amount.

(iii) The applicant shall attend the concerned police station once in a month i.e. first day of every month between 10.00 a.m. and 1.00 p.m. and the Investigating Officer shall record his presence and the applicant shall cooperate with the investigating agency.

(iv) The applicant shall not leave India without prior permission of the Court.

(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.

(vi) The applicant shall attend the proceedings before the trial Court regularly without seeking any exemption unless there are exceptional circumstances.

6. The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)