



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**CRIMINAL APPLICATION (BA) NO.1009 OF 2023**

Hivraj s/o Fulchand Bankar

Vs.

State of Maharashtra, Through Police Station Officer Mohadi, District Bhandara

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders

Court's or Judge's orders

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Mr. K. S. Motwani, Advocate for applicant.

Mrs. M. A. Barabde, APP for respondent/State.

**CORAM : URMILA JOSHI-PHALKE, J.**

**DATED : 09/01/2024**

1. By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.39/2023 registered with Police Station Mohadi, District Bhandara for the offence punishable under Section 302 of the Indian Penal Code. The applicant is arrested on 24.03.2023 since then he is behind bar.

2. Learned Counsel for the applicant submitted that on 23.03.2023 wife of the deceased namely Jayshree Pradip Dhande has lodged report against the unknown person stating that on 22.03.2023 at about 6.00 a.m. her husband after distributing the milk and after visiting the agricultural field returned at home. At about 7.30 p.m. her husband was not at home and at about 8.00 p.m. she came to know that the dead body of her husband was

found. She alleged that some unknown person has committed the murder of her husband for the unknown reason. On the basis of said report, police have registered the crime against the unknown persons. During the investigation, the Investigating Officer has recorded the relevant statements of the witnesses and on the basis of statements of two witnesses namely, Surendra @ Karya Gajanan Gotephode and Nitesh @ Bhurya Gajanan Ghotephode who have seen the deceased lastly along with the present applicant and another co-accused. During investigation, it further revealed to the investigating agency that, the present applicant has demanded amount of Rs.20,000/- from the deceased and as deceased denied to pay the said amount, there was dispute between them. It is further alleged that there was a transaction of transfer of amount between the accused No.1 and accused No.2 and said amount is transferred against the committal of the murder of deceased. Learned Counsel for the applicant submitted that entire case is rested on the circumstantial evidence. It is well settled that when prosecution case rests on the circumstantial evidence, prosecution has to establish the chain of the circumstances to connect the present applicant with the alleged offence. He submitted that except the statements of two witnesses on the last seen and the statements of the wife of the deceased and father of the deceased stating that the present applicant has demanded some amount from the deceased and

deceased declined to pay the same therefore, there was dispute, no other material is collected during the investigation to connect the present applicant with the alleged offence. Now, investigation is completed and charge-sheet is filed and further incarceration of the present applicant is not required and prays for releasing the present applicant on bail.

3. The said application is strongly opposed by the learned APP for the State on the grounds that the witnesses on the last seen, the money transaction between the present applicant and another co-accused, the statements of the wife and the family members of the deceased unanimously points out towards the connection of the present applicant with the alleged offence. Though, investigation is completed and charge-sheet is filed, if applicant is released on bail, he will tamper with the prosecution evidence and prays for rejection of the application.

4. Having heard learned Counsel for the applicant and learned APP for the State. Admittedly, the FIR is lodged against the unknown persons. During investigation two statements are recorded by the Investigation Officer namely, Surendra @ Karya Gajanan Gotephode and Nitesh @ Bhurya Gajanan Gotephode who stated that co-accused Anmol Pandurang Nimbulkar had been to their agricultural field and have chit-chat

with them and thereafter, he proceeded towards the agriculture field of one Uddal Lilahare and the co-accused Anmol Nimbulkar has not accompanied them. Except this statement, nothing is stated by these witnesses. The statement of the wife of the deceased and the statement of the mother of the deceased shows that deceased disclosed to them that present applicant has demanded Rs.20,000/- for gambling, but deceased declined to pay the said amount and on that day present applicant called the deceased, but deceased told that he will not pay any amount to him. As far as the money transaction between the present applicant and the co-accused is concerned, there is a statement of Gauri Nitin Singade which shows that on 22.03.2023 she received a phone call of co-accused Anmol Nimbulkar who informed her that from PhonePe she will receive the amount and phone number informed to her was 9049274991 which belongs to one Prashant Ramteke. Except this circumstance, no other material is collected by the investigating agency during the investigation. As far as money transaction is concerned, it is not between the deceased and the present applicant. The money transaction is between the present applicant and another co-accused. So, it is not sufficient to connect any connection regarding the alleged incident. As far as the statement of two witnesses who alleged to be the witnesses on the last seen, nowhere states about the presence of the present applicant with the deceased.

Thus, considering the entire material collected during the investigation, at this stage, applicant has made out the case for releasing him on bail. Now, investigation is already completed, charge-sheet is filed and further incarceration of the present applicant is not required. In view of that, application deserves to be allowed, considering the nature of the material collected during the investigation. Accordingly, I proceed to pass the following order.

**ORDER**

- (i) The application is allowed.
- (ii) The applicant **Hivraj s/o Fulchand Bankar** be released on bail in connection with Crime No.39/2023 registered with Police Station Mohadi, District Bhandara for the offence punishable under Section 302 of the Indian Penal Code, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- (iv) The applicant shall not enter into the vicinity of village Rampur Tq. Mohadi, District Bhandara, till the culmination of the trial.
- (v) The applicant shall furnish his cell phone number and address with the address proof.

(vi) The applicant shall not leave the jurisdiction of the District Court, Bhandara without prior permission of the Court.

The application is disposed of.

**(URMILA JOSHI-PHALKE, J.)**