



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 2044 OF 2024

Kailas s/o Marotrao Chiltewar,
Age: 43 years, Occu: Agril,
R/o. Ghogari, Tq. Hadgaon,
Dist. Nanded.

... Applicant

Versus

The State of Maharashtra
Through Police Station, Akhada Balapur
Tq. Kalamnuri, District Hingoli.

... Respondent

.....
Mr. Sudhir K. Chavan, Advocate for the Applicant.
Mr. V. M. Chate, APP for Respondent-State.
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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 31.01.2025

Pronounced on : 03.02.2025

ORDER :

1. Present application is for grant of bail on account of arrest of the applicant in crime no. 0157 of 2021 registered at Akhada Balapur Police Station, District Hingoli for offence under Sections 302, 201, 120-B r/w 34 of IPC.

2. Learned counsel pointed out that present application is successive application. That, even trial has commenced but it is proceeding at slow pace. Applicant is arrested in above crime in June 2021. Though crime is registered for murder and causing

disappearance of evidence, he submitted that, there is no iota of evidence against present applicant. That, case is primarily based on circumstantial evidence and sole circumstance is said to be last seen together. He pointed out that incident had allegedly taken place on the intervening night of 03.06.2021 and 04.06.2021 and FIR is lodged on 05.06.2021. Theory set up by prosecution is that, deceased had illicit relations with wife of accused. Allegation is of throttling. He pointed out that witness on 'last seen' speak about seeing applicant and deceased together at around 8.00 p.m. on 03.06.2021 but deceased was found dead on the next day. There was no quarrel, enmity or dispute between accused and deceased. Learned counsel took this Court through the substantive evidence of informant as well as his cross and submitted that, suspicion is apparently entertained. That, there is no incriminating evidence. Applicant is behind bars since more than three to four years. Trial is proceeding at snail's pace, and for such reasons, he seeks relief of bail.

3. Learned APP, who opposed, pointed out that trial is already underway. That, evidence of informant is already over. He pointed out that informant had seen deceased in the company of accused. Deceased was found to be strangled and later on, dead body was set to fire to cause disappearance of evidence. That, serious offence

has been committed and according to learned APP, when trial itself is underway, he seeks rejection.

4. Perused the papers. At the outset, it needs to be mentioned that applicant is admittedly arrested in June 2021 in consequence to FIR registered at Akhada Balapur Police Station on 05.06.2021, and is behind bars since then. Present application seems to be successive bail application as this Court had earlier rejected Bail Application No. 1290 of 2022, but in February 2022. therefore, present application is filed after almost three years. On 10.01.2025, this Court was informed that trial has already commenced, but learned counsel has pointed out that trial is proceeding at snail's pace. Consequently, this Court had sought report from learned trial Judge seeking current status, and report is received, which is annexed herewith, whereby learned trial Judge has conveyed the strength of files before it and has candidly opined that at least further one year would be required for concluding the trial. Consequently, matter is taken up for hearing on merits.

5. As stated above, papers show that FIR is of 05.06.2021 at the instance of Santosh Gavhane alleging that deceased Manikrao was his cousin brother and he had heard from him about love relations

developed with wife of accused. On 03.06.2021, he had seen deceased and accused together in a Skoda car and on 04.06.2021, he learnt that deceased met with an accident and therefore he went there. According to him, it was not accident, but it was murder by strangulation with further attempt to burn the body. Hence, on his such report, crime has been registered.

6. Admittedly, there is no direct eye witness and case seems to be based on circumstantial evidence and more particularly, on the theory of last seen together. Autopsy surgeon has opined death to be due to strangulation. Admittedly, case was committed and even trial seems to have commenced. Papers show that as many as 10 witnesses are already examined by prosecution up to 06.09.2024. Exactly how many witnesses prosecution intends to examine is not clear, but as stated above, learned trial Judge, who is seized with the trial, has expressed inability to conclude trial at least up to one year. As stated above, applicant is behind bars Since June 2021.

7. Considering the report of learned Additional Sessions Judge and primarily that case is based on circumstantial evidence, when there is nothing concrete to show that trial would be over in coming months, considering the long incarceration and above discussed

material, application deserves to be allowed. Hence, I proceed to pass the following order:

ORDER

I. The application is allowed.

II. Applicant Kailas s/o Marotrao Chiltewar, be released on bail in connection with Crime No. 0157 of 2021 registered at Akhada Balapur Police Station, District Hingoli, on executing Personal Bond of Rs. 15,000/- with one surety in the like amount, on following conditions:

[a] The applicant shall not tamper prosecution evidence.

[b] The applicant shall not leave Hingoli District till conclusion of trial without prior permission of the court.

[c] The applicant shall attend each and every effective date before the trial court.

[ABHAY S. WAGHWASE, J.]

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