

MHCH010018292021



**ORDER BELOW EXH.10 IN CRIMINAL BAIL**  
**APPLICATION NO.169/2021**  
**(Passed on 07<sup>th</sup> day of December, 2022)**

1] Read application. Perused say given by the Ld. A.P.P. Perused relevant documents on record. Heard Ld. APP for State and Ld. Counsel of applicant/accused. On going through the record it reveals that the applicant/accused No.2 Shankar Ramalu Gandhamwar has filed the present application for seeking bail under section 437 r/w 439 of the Code of Criminal Procedure in connection with crime No.132/2021 for offences under sections 302, 201, 120B & 109 of I.P.C. registered at Kothari Police Station Tahsil-Ballarpur, District- Chandrapur.

2] The factual matrix of the prosecution case in brief as under :-

According to the prosecution, the complainant Mutayya Sidam is residing at village Vyahad, Taluka Saoli District Chandrapur and doing business of selling utensils. His elder brother Malayya Sidam was having daughter Kavita who got married with accused No.1 Gangadhar Kannake at village Kothari as per the custom and tradition of their religion. Out of the said wedlock they have one daughter of two years old and at the time of incident said Kavita was nine months pregnant. However, the accused No.1 used to quarrel with Kavita on minor reasons but they settled the dispute between them in the Panchayat of their village and convinced the

accused. It is further alleged that in December 2020 he has purchased two-wheeler of Glamour Hero Company bearing No. MH-34/B-5233 on the name of his wife Kavita. It is further alleged that on 30.06.2021 at about 11.00 p.m. his nephew Pratap Sidam phoned him and narrated that said Kavita fell down from the vehicle near the bridge of Manora Village and died. Therefore, complainant phone Gangaram Gandham who also told him Kavita died due to falling from the vehicle and her body has been brought at home. It is further alleged that on 01.07.2021 at about 3.00 a.m. in the mid night when complainant and all relatives reached to the house of Kavita, they found that there was swelling injury on her forehead, head injury and black & blue marks on her neck. Therefore, he asked accused Gangaram Gandham about the same who told him that on 30.06.2021 at 10.00 p.m night near the village Kawadjai, Umri subway the accused Gangadhar Kannake and his wife fell down & therefore sustained injury on her forehead and she became unconscious. Therefore, they brought her at home in Pick-up vehicle but she reported to be dead.

3] It is further alleged that at the time of funerals the complainant and his relatives had doubt about death of said Kavita therefore they made inquiry and raised this issue in Panchayat of their village. Accordingly, in the said panchayat the complainant, Gangaram Gandham, Ramesh Tekam, Raju Parchake, and Gangadhar Kannake and Somaji Ramanna and other relatives of complainant were present. Accordingly, in the said Panchayat when inquiry is made about the said incident to the accused No.1

Gangadhar Kannake, he disclosed before Panchayat that he pressed the neck of his wife and assaulted on her head by means of utensils due to which she fell down and died on the spot. Thereafter when the complainant asked the reason of her murder the accused disclosed that there was 13 lakhs insurance on the vehicle which he has purchased on the name of deceased Kavita. Therefore, if she died in the accident he would get 12 to 13 Lakhs of the insurance amount so he has tried to show her death as accidental.

4] It is further alleged that when complainant again taken accused No.1 Gangadhar in confidence and made inquiry about the incident, he told him that he has taken a help of accused No.2 Shankar Ramalu Gandhamwar and accused No.3 Rajkumar Kannake by calling them on the spot of incident. The accused No.1 further disclosed that he intentionally slipped his vehicle due to which the accused No.1 and his wife Kavita fell down. Thereafter, the accused No.2 Shankar and accused No.3 Rajkumar came near them. At that time accused Shankar caught hold the hands of Kavita and accused Gangadhar caught-hold her legs and accused Rajkumar caught neck of Kavita and the accused No.1 assaulted on her head by means of utensil. After sometime when there was no movements of her body, they brought her body at house in the night. It is further alleged that the accused No.1 assured to accused Nos.2 & 3 that he will give them one lakh each after receiving the insurance amount and therefore they helped the accused No.1 for committing the murder of Kavita. Due to such incident complainant lodged report against accused Nos.1 to 3 at Kothari Police Station.

5] However, it is submitted on behalf of applicant/accused No.2 that he is law abiding person and falsely implicated in this case. It is further submitted that on perusal of FIR it reflects that the allegation levelled against the accused person is collective, non-specific, vague and without attribution of specific role of applicant/accused. It is further submitted that as per FIR the role of present applicant shown that he was only present at the spot. It is further submitted that the post mortem report not disclose any other injury except head injury and death caused due to head injury. It is further submitted that in this matter another accused No.3 Rajkumar Kannake filed bail application on 17.11.2021 which came to be rejected. The applicant/accused has no prima facie involvement and ready to abide conditions imposed by the court and he will not tamper the evidence of prosecution. Therefore, prayed for allowing application.

6] The application is strongly objected by the Ld. A.P.P. by way of filing the say below the same application. It is submitted that the offence registered against accused under Sections 302, 120B, 201 & 109 of IPC are serious in nature and non bailable. The Ld. APP brought to the notice of this Court the accused No.1 Gangadhar was having illicit relations with Gangubai and he hatched the conspiracy to murder of deceased Kavita with the help of accused Nos.2 & 3. It is further pointed out that all accused have made false story of accident, however, accused No.1 confessed before the relative about commission of murder of his wife. The Ld. APP further submitted that the investigating officer collected documentary oral

and scientific evidence and filed charge sheet against the accused. The accused smartly diverted investigation by showing murder as an accident. The punishment provided for the offence under section 302 of IPC which may extend to imprisonment for life or death. Therefore, no discretionary power can be used in such kind of offence while granting bail. Similarly if accused released on bail he may tamper the evidence of prosecution witnesses. Hence, prayed for rejection of an application.

7] In view of submission of both parties following points arise for my determination and I have recorded my findings thereon for the reasons stated below :-

| <u>Points</u>                                                             | <u>Findings</u>         |
|---------------------------------------------------------------------------|-------------------------|
| 1. Whether the applicant/accused is entitled for bail as sought ... for ? | No                      |
| 2. What order ?                                                           | ... As per final order. |

### REASONS

#### As to points No.1 & 2 :-

8] Heard the Ld. A.P.P. Shri Degawar for the State and the Ld. Counsel Shri Sharma for the applicant/accused. Perused record.

9] Having regard to the arguments advanced by Ld. Counsels of both parties and taking into consideration the facts & circumstances of the case it appears that the offence vide C.R.No.132/2021 under sections 302, 201, 120-B & 109 of the I.P.C. registered at Kothari Police Station, Tahsil- Ballarpur, Distt. Chandrapur against accused Nos.1 to 3. It is seen from the record

that on time to time the investigating officer sought PCR of the accused persons and then they remanded into judicial custody. After completion of the investigation the charge-sheet is submitted against accused Nos.1 to 3. It is matter of record that bail application filed by accused No.3 has been rejected by my learned predecessor by order dated 17.11.2021.

10] While arguing the case the Ld. Counsel of accused put emphasis on this aspect that the role of present applicant/accused No.2 is only his presence on the spot and he has falsely implicated in this case. The statement of witnesses not shown a prima facie involvement of applicant/accused. The police has indulged the applicant/accused in this crime at the instances of co-accused to harass the applicant/accused. There is a variance in the statement of witnesses about the involvement of applicant/accused. He is in jail since long and therefore his family is facing problems. In such circumstances as the investigation has been completed and charge sheet has already filed and therefore the accused is entitled for bail.

11] However, it is counter argued by the Ld. A.P.P. that it is a preplanned cold blooded murder of nine months pregnant of women i.e. deceased Kavita by the accused Nos.1 to 3 and all accused have involvement in this case. The Ld. APP put emphasis on motive of applicant/accused, to grab the amount of insurance of Rs.13,00,000/- of his wife and brought to the notice of this court the statement of complainant and witnesses which shows that the accused No.1 Gangadhar disclosed before Panchayat that he has

committed murder of his wife by pretending to be an accident, only for the amount of insurance. In such circumstances there is a material role of accused Nos.1 to 3 in commission of such preplanned murder of deceased Kavita. The number of documents and statement of witnesses clearly reflects the involvement of accused persons in such a heinous crime of nine months pregnant woman. Therefore, the applicant/accused is not entitled for bail.

12] In the light of above discussion at this juncture, I would like to take recourse of observation of Hon'ble Supreme Court in case of **Maulana Mohd. Amir Rashadi Vs. State of U.P. and Anr.** **reported in 2012 DGLS (SC) 35** in which it is observed that -

“Principles qua grant or refusal of the bail application. The court has to see the relevant factors including criminal antecedents and nature and gravity of the offence. The court is duty bound to see the role of accused, his involvement in the case in which he has been charged and other circumstances, such as the possibility of fleeing away from the jurisdiction of the court if released on bail.”

13] In view of above propositions of law and considering the attending circumstances of the case it appears that on hearing of the parties at length and considering all relevant documents on record as well as circumstances of the case, my Ld. Predecessor has been rejected the bail application of the applicant/accused No.3. Ld. APP brought to the notice of this court the statements of material witnesses recorded by Investigating

Officer u/s 161 of Cr.P.C., the statement of close relatives and witnesses recorded u/s.164 of Cr.P.C., various panchanamas, maps, photographs, post-mortem report and other relevant documents which reflects the prima facie involvement of present accused in such pre-planned murder of the nine months pregnant woman for the amount of 13 Lakhs of the insurance. It is also seen from the record that accused No.2 is a resident of Navi Daheli, Post- Bamani, Tahsil- Ballarpur, District- Chandrapur, in such circumstances, there is a possibility of tampering the evidence of prosecution and absconding the accused if he released on bail. Therefore, considering the overall circumstances I found that application is liable to be rejected. Accordingly, I proceed to pass following order.

**ORDER**

The bail application stands rejected.

(Pronounced in the open court.)

Chandrapur.  
Date : 07.12.2022

( Dr. Anita S. Newase )  
Additional Sessions Judge,  
Chandrapur.