



IN THE COURT OF DISTRICT JUDGE-1, & ASJ, GONDIA.

SPECIAL (ATRO) CASE NO. 21/2022.

(CNR NO.MHGO010004092022)

State, PSO, Salekasa -Vs- Gajanan Bhagat + 4

ORDER BELOW EXH. 108.

(Passed on this 14th day of March, 2023)

This is an application filed by applicant/accused No.1-Gajanan Bhaulal Bhagat for grant of bail u/s 439 of Cr.P.C. The applicant/accused has been arrested on 08/01/2022 by Police Station, Salekasa in Crime No. 05/2022 for alleged offence punishable under Sec. 302 r/w 34 of IPC and Sec.3(2)(v), 3(2)(5-a) of SC & ST (Prevention of Atrocities) Act. This is second bail application. His earlier bail application is rejected by order dated 05/08/2022 passed below Exh.2.

2] Brief facts of the prosecution case is as under:

That, the deceased Sandip Manohar Dhamgaye, aged 28 years was having love affair with Harshlata daughter of accused Girwarlal Uprade since last 2-3 years. Prior to one year there was a settlement. On 07/01/2022 at about 5.30 p.m. he was returning from village Nimba on his motorcycle. The deceased being of Schedule Caste was not acceptable to

the accused, hence on that day all the accused way-layed the deceased Sandip and assaulted him with sticks and kicks and threw him in the field. He was thereafter taken to Rural Hospital. Initially he was found to have simple injuries but as complications developed he was referred to K.T.S., Hospital where he died. As per the post-mortem report the deceased had sustained laceration on the right kidney and died due to hemorrhage and shock as a result of injury to right kidney. The dying declaration of the deceased was recorded while he was hospitalized at the Rural Hospital, Salekasa. In the said dying declaration the deceased named accused Khushal Girawlal Uprade and Girawlal and two other persons who were not named.

3] Learned Advocate for the applicant submits that the present application is filed under change circumstances as similarly placed co-accused Kuwarlal Lihare has been granted bail by the Hon'ble High Court by order dated 22/12/2022 in Criminal Appeal No.704/2022. He further submits that applicant has not been named by the deceased in the dying declaration. The entry of recording of dying declaration was not taken in the general diary which creates doubt of his genuineness as no F.I.R. was registered despite recording of dying declaration. Nothing has been recovered from the applicant. Apart from the statement of co-accused while recording discovery there is no other evidence. The applicant

is aged 55 years of old and he is in jail since 08/01/2022. He has prayed for grant of bail.

4] I.O. has filed reply at Exh. 111 and opposed the application on the ground that the offence is grievous. Prima facie case is made out. There is ample evidence in the charge-sheet to show his active involvement in the said crime. The applicant may threaten or influence the witnesses if released on bail. He has prayed for rejection of the application.

5] Notice was also issued to the victim who appeared through advocate Shri Wanjari and filed reply at Exh.114 and objected on the ground that the offence is grievous. The deceased was assaulted and murdered since he belongs to Schedule Caste and love relation between the deceased and daughter of Girawlal was not accepted. Though the applicant has not been named in the dying declaration the investigation officer found his involvement in the said crime and he has been arrayed as an accused. Applicant may threaten or influence the witnesses. He has prayed for rejection of application.

6] Ld. DGP Shri. Chandwani has filed say at Exh.112 and opposed the application on the ground that the applicant in furtherance of common intention killed the deceased. The role of the applicant is very clear from the statement of witnesses. Prima facie case is made out and there is ample

evidence regarding involvement of the applicant. There are chances of influencing and threatening the witnesses who are of the same village. He has prayed for rejection of the application.

7] Perused the charge-sheet and also the order passed by the Hon'ble High Court in Criminal Appeal No. 704/2022. The case of the applicant and of co-accused Kuwarlal Lihare are similarly placed. The applicant has also relied upon the case of *Tanaji Raoji Sinare -Vs- State of Maharashtra, 2014 ALL MR Criminal 862* and has claimed parity. In view of the applicant's case being in parity with the case of Kawarlal Kilhare (co-accused) he is entitled for grant of bail. Hence, I pass the following order.

ORDER

- 1] Application [Exh.108] is allowed.
- 2] The applicant/accused **No.1-Gajanan Bhaulal Bhagat** be released on bail on his executing PR bond of Rs.25,000/- and furnish one surety of Rs.15,000/- on the following conditions;
 - (i) The applicant shall not threaten or influence the witnesses.
 - (ii) The applicant shall attend the trial regularly.
- 3] Application is disposed of.

Gondia.
Dated: 14.03.2023.

Sd/-*
(Adil M. Khan)
District Judge-1 & ASJ,
Gondia.