

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. 100.

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

This is an application filed by applicant/accused No.4-Khushal Girwarlal Uprade for grant of bail u/s 439 of Cr.PC. 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.

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 present applicant/accused Khushal Girawlal Uprade and Girawlal Uprade and two other persons who were not named.

3] Learned Advocate for the applicant submits that 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 released on temporary bail on four occasions for appearing in examination and he abided each and every conditions imposed by the court and returned to the jail after examination. All the other co-accused have been granted bail by the Hon'ble High Court and this court. He also placed on record the statement of marks obtained by him for the examination which he appeared from the jail. He has prayed for grant of bail.

4] I.O. has filed reply at Exh.103 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 has been named in dying declaration of the deceased. 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.106 and objected on the ground that the prima facie case is made out against the applicant. Applicant may threaten or influence the witnesses. There is dying declaration in which applicant has been named. He has prayed for rejection of application.

6] Ld. DGP Shri. Chandwani has filed say at Exh.104 and opposed the application on the ground that the applicant assaulted the deceased with stick on hands, legs and back as stated by the deceased in his dying declaration. He may tamper with the evidence if released on bail. Prima facie case is made out against him. He has prayed for rejection of the application.

7] Perused the charge-sheet. In the dying declaration the deceased has named the applicant as well as his father Girawlal as the person who assaulted him with kick, fist and sticks on his hands, legs and back along with two other persons. Perusal of the post-mortem report shows that deceased died due to injury to the kidney. Co-accused Kuwarlal was released by the Hon'ble High Court as he was not named in the dying declaration. Similarly this court also released accused Gajanaj Bhagat since his case was in parity of the case of Kuwarlal to whom the Hon'ble High Court granted bail. Co-accused Girawlal was granted bail on medical ground and not on merits. The case of applicant cannot be equated with Gajanan Bhagat and Kuwarlal Lilhare. Prima facie case is made out against the applicant. Applicant cannot take undue advantage of the concessions granted by this Court to appear in the examination which were granted considering that his academic should not suffer. Prima facie case is made out against the applicant. Hence, I pass the following order.

ORDER

- 1] Application [Exh.100] is hereby rejected.
- 2] Application is disposed of.

Gondia.
Dated: 20.03.2023.

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