

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

SESSIONS TRIAL NO. 55/2020.
(CNR: MHGO01000502-2020)

STATE OF MAH.-Vs- KANHAIYA

COMMON ORDER BELOW EXHS. 02 & 06.
(Passed on this 16th day of October, 2020)

1] The application at Exh.2 is moved by the applicant/accused through D.L.S.A. Gondia, in Crime No.242/19 for the offence punishable under section 302 of the Indian Penal Code, on the backdrop of pandemic COVID-19. The application at Exh.6 is moved by advocate for the applicant/accused in the same crime for grant of interim regular bail. The applicant/accused has also filed application under section 439 of Cr.P.C., in the same crime for grant of regular bail, but considering the present pandemic COVID-19 applications at Exh.2 and 6 are commonly decided by this court.

2] It is contended by the accused person that he is under trial prisoner and the offence levelled against him is punishable with imprisonment for more than seven years and it is not related with Bank Scam or other serious economic offence and under section 121 to 130, 303, 364(A), 366, 366(A), 366(B), 367 to 374, 376, 376(a) to (e), 396, 489A, B, D of the Indian Penal Code and also not relating to Bank Frauds and Major Financial Scams, MCOC, TADA, POTA, UAPA, PMLA, Explosive Substances Act, Anti Hijacking Act, NDPS (Other than personal consumption), MPID,

POCSO, Foreigners in Prison etc. on the backdrop of COVID-19 pandemic and the directions issued by the Hon'ble Supreme Court in Suo Moto Writ Petition No.01/2020, the accused prayed for releasing him on interim bail.

3] The prosecution case is that during 09/10/2019 to 10/10/2019 deceased Manohar Uikey was found dead in his field. He had gone to the field for guarding the field from wild pigs. During investigation, it transpired that the applicant/accused was having dispute with the deceased on the issue of partition of the field. At the instance of applicant/accused the alleged weapon by which the applicant/accused had inflicted blows was seized and the applicant/accused was arraigned as an accused. The application is moved by the accused through DLSA, Gondia, considering the present COVID-19 pandemic and the judgment of Hon'ble Supreme Court in Suo Moto Writ Petition No.01/2020 and recommendation of the High Powered Committee.

4] It is contended by the applicant/accused that the case is based on circumstantial evidence. There is no eye witness to the incident.

5] I.O. opposed the application on the ground of seriousness of the offence and tampering of the witnesses.

6] Perused the charge-sheet.

7] The circumstances and material on record on which the prosecution case is based are (i) recovery of the axe; (ii)

enmity of the deceased with the applicant/accused and (iii) motive of the applicant/accused. On all these circumstantial evidence the prosecution case is based. But at this stage it seems that on these circumstances the prosecution case does not seem to be on strong footing. It has been also one year the applicant/accused is behind the bar. By imposing strict conditions so that the evidence is not tampered the applications can be allowed. Hence, I proceed to pass the following order.:-

ORDER.

- 1] The applications (Exh.02 & 06) are hereby allowed.
- 2] Accused **Kanhaiya S/o. Tarachand Uikey**, be released on executing **P. R. Bond of Rs. 25,000/-** for a period of 45 days or till such time the State Government withdraws the Notification under the Epidemics Act, 1897, whichever is earlier, on the following conditions.:-
 - i] He shall remain present in concerned police station within whose jurisdiction he is residing, once every 30 days from the date of his release.
 - ii] He shall not enter the village Rangepar/Pandhari, till further order;
- 3] Inform concerned P.S.O. accordingly.

Gondia.
Dated:- 16/10/2020.

(S. B. Parate)
District Judge-1 & ASJ, **Gondia**.