

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE,  
GONDIA.**

**SESSIONS CASE NO.71/2020.**  
***CNR No.MHGO010007262020.***

**THE STATE OF MAH. VS. ANKIT BIRANWAR & ORS.**

**ORDER BELOW EXH.64.**  
(Passed on 13<sup>th</sup> January, 2023)

The applicant by name **Ankit S/o Radheshyam Biranwar** by this application under Section 439 of the Code of Criminal Procedure prays for regular bail in Sessions Case No.71/2020 (Crime No.399 of 2019) registered with Ramnagar Police Station, District Gondia under Sections 302, 364-A, 120-B, 201 of The Indian Penal Code, 1860.

2] Perused the application and say filed by Learned PP on the backside of Exh.64.

3] From the contents of charge-sheet, it reveals that, the allegations levelled against present accused and other co-accused are that on 15<sup>th</sup> December, 2019 at about 2:00 p.m. at MIET College, Kudwa, accused persons in furtherance of their common intention, kidnapped Saurabh Katare for ransom of Rs.30,00,000/- and murdered him. Another allegations levelled against accused

are that accused in furtherance of their common intention, tried to destroy the evidence.

4] From the contents of application, it reveals that, initially missing report was registered. On the basis of CDR report, applicants were implicated. No test identification parade was conducted to connect the accused. Case of prosecution is relying upon the statement of Umesh Patle who is alleged eye witness and give different version. There is absolutely no direct or indirect evidence against accused. Mere on a fact that accused called deceased Saurabh four times, he is implicated. Since 17/12/2019, applicant is behind bar. There is change in circumstances. Since long, trial is pending.

5] From the say of Learned PP, it reveals that, previous bail applications of accused were rejected on merit. The Hon'ble High Court was also pleased to reject the bail application of accused. There is no change in circumstances. There is direct and circumstantial evidence against accused. The evidence has been already started. If accused is released on bail, possibility cannot be ruled out that he will pressurize the witnesses.

6] Learned advocate for accused filed written notes of argument at Exh.76 and at Exh.77. It is argued by Learned advocate for accused that there is change in circumstances. Trial is

pending since long. Per contra, it is argued by Learned PP that, there is no change in circumstances. Prosecution is ready to expedite the trial.

7] To support his contention, Learned advocate for accused relied upon following citations.

- (1) **Shaheen Welfare Association Vs Union of India & Ors., 1996 SCC (2) 616.**
- (2) **Paramjit Singh Vs State (NCT of Delhi), AIR 2000 SC 3473.**
- (3) **Mahesh Kumar Bhawsinghka Vs State of Delhi (2000) 9 SCC 383.**
- (4) **Adnan Bilal Mulla Vs State of Maharashtra, Criminal Appeal No.1076 of 2008.**
- (5) **Union of India Vs K.A. Najeeb, Criminal Appeal No.98 of 2021.**
- (6) **Umarmia Alias Mamumia Vs State of Gujarat, Criminal Appeal No.1650 of 2011.**
- (7) **Ashim @ Asim Kumar Haranath Bhattacharya Vs National Investigation Agency, Criminal Appeal No.1525 of 2021.**
- (8) **Jafarudheen & Ors. Vs State of Kerala, 2022 LiveLaw (SC) 403.**

- (9) **Arjun Panditrao Khotkar Vs Kailash Kishanrao Goratyal Civil Appeal No.20825-20826 of 2017, decided on 14<sup>th</sup> July 2020.**
- (10) **Sanjay Chandra Vs Central Bureau of Investigation, AIR 2012 SC 830.**
- (10) **State of Kerala Vs Raneef, AIR 2011 SC 340.**
- (11) **Dipak Shubhashchandra Mehta Vs CBI, AIR 2012 SC 949.**
- (12) **Rajesh Ranjan Yadav alias Pappu Yadav Vs CBI, AIR 2007 SC 451.**

8] I have gone through the above mentioned citations.

9] Necessary to mention here that, in the case at hand, charge is framed at Exh.32 on 27/01/2022. Komal Katare (PW-1) is examined at Exh.40. Umraj Chaudhary (PW-2) is examined at Exh.46. Siddhanathsingh Thakur (PW-3) is examined at Exh.55 and Arjun Nagpure (PW-4) is examined at Exh.67. Order below Exh.55 is passed on 01/04/2022 pertaining to admissibility of evidence.

10] By passing order below Exh.55 dated 01/04/2022, my Learned Predecessor directed Learned PP to examine witness on relevant facts under Section 27 of the Indian Evidence Act, 1872.

11] As far as question of accused No.1 is concerned, his bail applications at Exh.4 and 8 are not pressed on 29/10/2020. His regular bail application at Exh.13 is rejected on 02/02/2021 on merit. His Covid bail application below Exh.15 is rejected by passing common order below Exh.15 to 18 on 21/05/2021. Again regular bail application of present accused is rejected at Exh.22 on 30/06/2021. Further necessary to mention here that, Criminal Bail Application No.191/2021 of present accused has been rejected by the Hon'ble High Court, Bench at Aurangabad on 03/08/2021. Another bail application of present accused has been rejected by the Hon'ble Parent High Court in Criminal Application No.1336/2021 on 06/01/2022.

12] While passing order below Exh.13 dated 02/02/2021, the then Learned Additional Sessions Judge, Gondia observed as under;

*"After going through the statement on record, especially the statement recorded under Section 164 of Cr.PC. of Anil, it appears that, said witness has seen the present applicant/accused in a car at the relevant time of crime. The circumstances brought and material on record are strong enough so as to support the allegations against the present applicant/accused. Considering the manner in which the offence has been committed and manner in which the dead body of*

*deceased was disposed of, it is apparent that the present applicant/accused along with other accused have entered into the conspiracy and committed brutal murder. Considering the gravity of offence, likelihood of present applicant/accused, pressurizing the witnesses being relative of the witnesses and considering the strong circumstances on record, I find that the present applicant/accused is not entitled to be released on bail."*

13] Further necessary to mention here that, the temporary bail application of present accused has been rejected on 30/06/2021 by passing order below Exh.22.

14] It is also necessary to mention here that, on 03/08/2021, Hon'ble Parent High Court while deciding Criminal Application No.191 of 2021 observed as under;

*"The circumstances which the prosecution is pressing in service, are prima facie, substantiated by the statements of the witnesses. The call record which show several calls made by the applicant to the deceased Mr. Saurabh are prima facie indicative of the role played in summoning the deceased to the pre-decided spot from where the deceased was kidnapped. The statements of witnesses are recorded under Section 164 of the Code of Criminal Procedure, 1973. The statement of witness Mr. 'A' prima facie establishes the presence of the applicant along with co-conspirators*

*in the vehicle in question in which the deceased was kidnapped and then brutally done to death."*

15] The Hon'ble Parent High Court while deciding Criminal Application No.1336 of 2021 dated 6th January 2022 observed as under;

*"The only change in circumstance, which is sought to be canvassed, is that since the date of rejection of earlier application, the trial has not progress. In my considered opinion, that cannot be a reason to entertain the present application, considering the fact, that the Courts below are overloaded due to the backlog created on account of Covid 19 pandemic."*

16] By observing that, the bail application of present accused No.1 came to be rejected by the Hon'ble Parent High Court as mentioned above. Necessary to mention here that by passing order below Exh.13, by passing order below Exh.22, dated 02/02/2021 and 30/06/2021 respectively, the earlier bail applications of present accused has been rejected on merit. Being dissatisfied by the order, accused No.1 approached to Hon'ble Parent High Court and Criminal Bail Application NO.191/2021 was rejected on 03/08/2021 and also Criminal Bail Application No.1336/2021 was rejected on 06/01/2022 on merit. Then after,

trial has been commenced. The evidence of 04 witnesses were already recorded and then after, present application was filed.

17] In my mind, there is no material change in circumstances. Prima-facie evidence on record is sufficient to connect the accused for the charges levelled against him. From the record, prima-facie it reveals that, present accused along with co-accused have entered into the conspiracy and committed brutal murder of Saurabh Katare. Considering the facts and circumstances of the case, I am of the view that, accused No.1 cannot get the benefit of observations of the Hon'ble Apex Court and the Hon'ble High Court on which he has relied upon. Reliance is also necessary to be placed on the observations of the Hon'ble Apex Court in a case of *P. Ramachandra Rao Vs State of Karnataka, Crimianl Appeal No.535 of 2000, dated 16/04/2002*, wherein in Para No.4 it is observed that ***"It is neither advisable nor feasible nor judicially permissible to draw or prescribe an outer limit of all criminal proceedings."*** No doubt, it is necessary on the part of the concerned Court to make its best endeavour to decide the case as early as possible specially when accused is/are in Jail. However, for that the cooperation on the part of all concerned is necessary and must. In the case at hand, at the most, trial can be expedited considering that present accused and other co-accused are in Jail. In my mind, accused is not entitled to release on regular bail. Hence, I proceed to pass following order:

**ORDER**

The application at Exh.64 stands rejected.

Date:13.01.2023.

Sd/-  
(N. D. Khose)  
Additional Sessions Judge,  
**Gondia.**