

MHND010023752020

**ORDER BELOW EXH No.307 IN SESS. CASE NO. 162/2020****State of Maharashtra Vs. Sushil and others****(Dt: 24th December 2024)**

After being arrested in connection with Sessions Case No. 162/2020 (Crime No.252/2020 of Vimantal Police Station, Nanded, District Nanded for offences punishable under Sections 147, 148, 302, 201, 120(B) r.w.s. 149 of the Indian Penal Code (hereinafter 'IPC') and sections 3/25 and 4/25 of the Arms Act, the accused No.9/applicant **Kailash Jagdish Bighaniya**, r/o. Cidco, Nanded, has applied for regular bail under Section Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023.

2- Offences alleged against the applicant in the charge-sheet :-

Prior to one month of the FIR there was quarrel between Ravi Thakur, the informant's brother Vicky's (the deceased) friend and the applicant and Naresh Thakur. They had beaten said Ravi Thakur with assistance of their gang members. Thereafter said Ravi Thakur obtained help of the deceased. At that time the applicant had threatened the deceased to kill. On 03.08.2020 the informant came to know from police that the deceased was murdered. She alleges in the FIR that said offence was committed by the applicant. When she visited the Govt. Hospital at Vishnupuri, she found that there were gunshot injuries and multiple injuries on the body of the deceased.

b) During investigation it was revealed that on 02.08.2020 when the deceased was traveling on his Pulsor motorcycle No.MH-26-BN-9815 one silver colour car gave dash to the said motorcycle. The assailants killed the deceased by firing bullets and using swords and other sharp edged weapons and threw his dead body near Godavari river. The location of the dead body was shown by the co-accused Munjaji Dhongade and Sushil Gavkare. Thereafter the applicant and other co-accused persons were arrested, weapons were recovered from them. It was revealed in the investigation that the applicant was the prime accused and leader of the gang. It was also revealed during the investigation that some of the accused persons had taken photograph of the deadbody of the deceased and dealt blows on the said body in cruel manner.

3- Contentions :-

a) The applicant has prayed to admit him to bail by contending the applicant has been falsely implicated in the case and nothing incriminating has been recovered from him, the applicant is innocent and has not committed any offence whatsoever, the applicant is sole earning member of his family, the FIR is lodged due to previous enmity, there is no likelihood of the applicant tampering with the prosecution evidence, the investigation of the case *qua* the applicant is over and no useful purpose would be served if he is denied bail. He has further stated in the application the deceased was habitual offender with several enemies who were plotting to eliminate him, statements of co-accused are not admissible in evidence, none of the witnesses

have deposed against the applicant, there is no independent witness to support the prosecution story, alleged discovery from the applicant cannot be a ground to reject his application, the muddemal property is not produced by the prosecution even after commencement of trial and therefore he be released on bail.

b) The learned A.P.P. has filed say (Exh.312) and contended that the applicant is mastermind of the offences, the applicant produced one country made pistol with cartridges before police during investigation, the applicant runs 'KB Gang' in Nanded city and therefore the provisions of MCOC Act are applied to this case, the FIR and statements under Section 161 of Cr.P.C. specifically name the applicant and his role in the offences, the applicant will tamper prosecution witnesses, the applicant will commit similar offence if released on bail and he will not cooperate with the process of law, therefore, the bail application be dismissed. He has specifically stated that the evidence of the informant Manjusha is not yet recorded and there is every possibility of threatening the said witness therefore the applicant's prayer be rejected.

4- Submissions :-

a) Learned Counsel appearing for the applicant submits that after reading the FIR there are no grounds for believing that the applicant has committed any offence, custodial interrogation of the applicant is no more required in the backdrop of the fact that after initial police custody the applicant is eventually remanded to judicial custody, the applicant was forced, induced and threatened

to make involuntary statement by the police officer, the magnitude of the offence cannot be a sole criterion for denying the bail to the applicant, the applicant is ready to abide by any bail condition, the applicant is permanent resident of District Nanded, Maharashtra State and there is no chance of his absconding, the applicant is respectable man of the society and he has never come to the adverse notice of any law enforcing authority, the applicant is not previously convicted and therefore he be released on bail. He has placed on record bail order of the applicant dated 12.12.2024 in Cri. Appln.No. 4947/2024 of the Hon'ble Bombay High Court wherein it is observed that the applicant was allegedly involved in the conspiracy but did not participate in the incident and therefore he was released on bail on parity ground.

b) *Per contra*, Learned APP has strongly resisted the application contending that the allegations against the applicant are serious, the contents of FIR and statements of witnesses practically prove that the applicant is guilty of serious offence, there is *prima-facie* evidence to convict the applicant for the offence, the applicant was nursing hatred against the victim, the Court need not go into minute details of the incident while deciding the bail application, the applicant cannot claim innocence and ignorance in the facts and circumstances of the case, although there is no judgment of conviction of the applicant his conduct itself is showing his criminal mindset, the applicant is a person wielding considerable influence, he is affluent and there is every possibility of his interfering with the investigation if set at large and therefore the application be dismissed in the interest of

justice.

5- Discussion :

After hearing Learned Counsels for both the sides and going through the record with their valuable assistance and after considering the matter deeply, the prosecution alleges that the applicant is a master mind of the alleged offence and he had given threats to the deceased prior to the incident. The photographs and statements of the witnesses display brutality in committing the offences by the accused persons. There is recovery of dangerous weapon like pistol from the applicant. As such there is *prima facie* case against him. Taking into consideration the totality of the facts and circumstances emanating from the record, the nature and gravity of the accusation, the reasons discussed herein above and without commenting further anything on merits, *lest* it may prejudice the case of either sides during the course of trial, applicant is not entitled for bail. In that backdrop, the applicant cannot be given benefit of his release in another case. Hence, following order-

ORDER

The application is dismissed and disposed off.

Date :- 24.12.2024

(C.V. Marathe)
Addl. Sessions Judge, Nanded.

CERTIFICATE

I affirm that the contents of this PDF judgment /order are same word to word as per the original order.	
Name of the Stenographer	: B.R. Khindre, Steno Grade-1
Name of the Court	: District Judge-1 & Addl. Sessions Judge, Nanded.
Date of the Judgment/Order	: 24.12.2024
Judgment /Order signed by the P.O. on	: 24.12.2024
Judgment/Order uploaded on	: 24.12.2024

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