

**Common Order below Exh.33, 45 and 49 in Sessions Case No. 48/2018.**

1) Application Exh.33 is filed by applicant / accused No. 3 - Kailas Gulab Punekar while application Exh.45 is filed by applicant /accused No. 5 - Jyoti @ Nirmala Champalal Jat for releasing them on bail u/s. 439 of Cr.P.C. Application Exh. 49 is filed by applicant No. 3 - Kailas Punekar in support of application Exh.33 along-with last rites ceremony invitation card of his mother late Tulsabai Bhila Punekar.

2) I have heard learned respective counsel for applicants and also heard the ld. APP and also perused the say filed by investigating machinery and the charge-sheet.

3) The applicants are charge-sheeted before this Court for the offences punishable under Sections 302, 201 and 120-B of IPC. Case of the prosecution in short is such that, the deceased was husband of applicant No. 5 - Jyoti while accused - applicant No. 3 is brother of applicant - accused No.5 and as such, he was brother-in-law of deceased. Meanwhile, applicant No. 5 developed illicit relations with accused No. 1 - Ramesh and this fact came to the knowledge of deceased due to which, he used to beat the applicant. Therefore, the applicants No. 3 & 5 both hatched conspiracy and they directed accused No.1, applicant No. 3 to kill the deceased, upon which, accused No.1 and applicant No. 3 hired accused No. 2 and 4 ( accused No. 4 is discharged of the alleged offences ) to commit murder of deceased for Rs.15,000/- and accordingly, accused No. 1 and 2 took the deceased by pretending to receive relative at Railway Station and in the late night of 03.04.2018, accused No.1 and 2 killed the deceased by assaulting him with chopper and then, to disappear the evidence, they set the dead-body on fire with petrol.

4) It is the contention of applicant No. 3 - Kailas Punekar that he is the only earning member in his family and he is in jail custody since 05.04.2018. The investigation is over and charge-sheet has been filed. Nothing remained to be investigated or seized. There is no possibility that he may remain abscond. He is ready to abide each and every conditions which may be imposed. There is no incriminating material against him. He is not appearing in the CCTV footage. There is no CDR or SDR to connect the

applicant with the offence. Under such circumstances, he be released on bail. In addition to this, he filed an application Exh. 49 and contended that on 22.09.2019, his mother namely, Tulsabai has been passed away. He was not able to attend her funeral as he is in jail custody. However, last rite ceremony are going to be performed on 04.10.2019 and therefore, at least to attend said ceremony, he may be released on bail.

5) The prosecution has opposed this application on the ground that the offence is serious one. The deceased has been killed brutally and his dead-body came to be burnt with petrol to disappear the evidence. Under such circumstances, applicant should not be released on bail.

6) The application Exh. 45 is directly filed by applicant - Jyoti from jail custody, in which she has stated that she has two minor children and as she being in jail custody since 10.04.2018, she is unable to meet them and to look after them. She has no relatives, so that her children may be looked after. However, not only the prosecution but the children of this applicant opposed the application on the ground that the applicant should not be released on bail as she has done ill act. The prosecution has opposed the application on the ground that this applicant is main accused and master mind of the crime. Her children are being looking after very well by the complainant side and they are taking education properly. If she is released on bail, she may tamper with evidence and may also remain abscond.

7) From perusal of the record, it appears that this is the second bail application of applicant No. 3 - Kailas Punekar. Previously, he had filed application Exh.5 for grant of bail which was rejected on the ground that there is evidence against the applicant that he is involved in the commission of offence and as the offence is punishable with death or life imprisonment, there is possibility that he may remain abscond and may try to tamper with evidence. As such, previously, the application for bail of this applicant was rejected, on merit, after filing charge-sheet and under such circumstances, there must be some change in circumstances to consider his bail application. However, upon perusal of his application - Exh.33, it does not appear that applicant has shown any change in circumstances. However, there is

application Exh. 49 which suggest that due to death of mother of applicant namely, Tulsabai, he has to attend last rites ceremony on 04.10.2019. However, this cannot be the ground to release the applicant on bail vide application Exh.33 but he may be released on bail only for the purpose of attending last rites ceremony on 04.10.2019 or he may be directed to be produced under security to attend said program. Therefore, I do not find any ground to allow application Exh.33.

8) As far as the application of applicant No. 5 namely, Jyoti is concerned, the main ground raised by her itself has been washed out by her children by stating before Court that their mother should not be released on bail as she has committed ill act. The prosecution has also placed on record material to show that children of applicant are taking education properly and as such there is no substance in the application filed by applicant - accused No.5. The charge-sheet reveals that she is master mind of the crime and under such circumstances if she is released on bail, she may remain abscond due to which the trial may be delayed.

9) For the aforesaid reasons, I deem it fit to pass following order.

**Order**

1. The applications Exh.33 and 45 stands rejected.
2. Application Exh.49 is partly allowed.
3. The Superintendent of Central Jail, Nashik-road is directed to take the under-trial prisoner namely, Kailas Bhila Punekar to his house at Kuber Corner, Flat No.32, Jail Road, Nashik-road on 04.10.2019 at 9.00 am under safe custody and shall remain there till 3.00 pm and again bring the applicant in the judicial custody in safe manner.
4. Inform concerned police station accordingly by issuing letter and copy of order.

Niphad.  
01.10.2019.

( R. G. Waghmare ),  
Additional Sessions Judge,  
Niphad.