

ORDER BELOW EXH.190 IN SPECIAL CASE NO.01/2021
(DATE : 18/06/2024)

This is bail application under section 439 of The Code of Criminal Procedure filed by accused Vishal Khetre in Crime No.607/2020 registered under section 302, 102-B, 201, 143, 147, 148 r/w 149 of Indian Penal Code and Section 3(2)(v) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2- It is the case of prosecution against the accused that accused Santosh was serving in the police department and he was acquainted with deceased Ramabai Sadavarte, member of Scheduled Caste. Accused Santosh has promised deceased Ramabai to give job to her. Accused Santosh has insured Ramabai for the amount of Rs.25 Lac through insurance agent. Accused Santosh has deposited the premium of insurance of Ramabai. In order to get the insurance amount of deceased Ramabai, he has prepared plan to kill Ramabai along with co-accused Dnyaneshwar, the applicant, Radha and Datta. It is further case of prosecution that on 06/10/2020 in the night time, the applicant, accused Santosh and Dnyaneshwar came to Parbhani. Accused Santosh called Ramabai with the document, at that time, accused Santosh also called accused Radha and Datta. Accused Radhabai injected Diazepam to deceased Ramabai. The applicant/accused caused deceased Ramabai to fall. The applicant and co-accused Dnyaneshwar gave stone blow on the head of the deceased. After death of Ramabai, she was taken into Civil hospital, Parbhani. However, on the way to Civil Hospital, the auto-rickshaw was stopped at Idgaah Maidan. At that place red colour cloth covered to deceased Ramabai's face was thrown there. It was done to show that deceased Ramabai was died in the accident. Accused Santosh was arrested at civil hospital on the suspicion. Thereafter,

charge-sheet came to be filed against all the accused including the applicant.

3- The applicant submitted that applicant was arrested on 10/10/2020. He has not played any role while committing said crime. The charge-sheet came to be filed on 05/01/2021 and said case is committed by Chief Judicial Magistrate, Parbhani before the Sessions Court. The charge was framed on 18/08/2021. The name of this applicant was not mentioned in the FIR. There is no evidence against the applicant. Applicant has no relation with the deceased or any other witnesses. Only clothes of applicant came to be recovered during the investigation and those were not having blood stains. The articles recovered from the applicant are not incriminating articles. The first bail application of the applicant was rejected on 24/05/2021. The applicant has challenged said bail order before Hon'ble High Court and said application came to be withdrawn after the observation that the trial should be concluded within reasonable time. In this case, prosecution has examined in all 22 witnesses. The trial is not concluded within reasonable time as per direction of Hon'ble High Court, therefore, this application is filed. The mother of applicant is under medical treatment. She has no any other person than the applicant/accused to take care of her. This is second bail application filed before the Court. There is no iota of evidence against applicant/accused. Since more than three years, applicant is in magisterial custody. He is ready to abide all conditions imposed by the Court. Hence, applicant prayed that he be released on bail by allowing this application.

4- DGP for the State has resisted this application by filing reply (Exh.211) on the ground that the debtor of grandfather of the

informant was avoiding to repay the amount, therefore, mother of the informant i.e. deceased had been to co-accused Santosh Jadhav, Police Constable and accused Santosh assured that he will help the mother of the informant to recover said amount, therefore, co-accused Santosh was having visiting terms with the deceased. The mother of the informant after receiving phone call of accused Santosh, she had been to accused Santosh along with document asked by accused Santosh. Thereafter, mother of the informant did not return back to the house. Co-accused Santosh along with the applicant and other co-accused made criminal conspiracy prior to 10 to 12 days of the incident and they have arranged accident insurance policy with Mahipal Sigma Company. Co-accused Santosh brought the deceased in open land near Pathri road by motorcycle. At that place co-accused Radhabai gave intoxicated injection to the deceased and thereafter, applicant and co-accused Datta had committed murder of mother of the informant by assaulting her by means of stone on her head. Thereafter, accused Dnyaneshwar had brought dead body of mother of the informant to civil hospital and falsely reported that deceased died in road accident. The applicant has helped main accused to commit murder of mother of the informant and he had assaulted the deceased by means of stone on her head. He has taken active part in commission of crime. There is extra judicial confession of co-accused Dnyaneshwar about the applicant had committed murder of mother of the informant. While carrying the dead body of the deceased, applicant is captured in CCTV camera of the hospital. The red cloth used for muffling the mouth of the deceased was recovered from the applicant. In all 23 witnesses are examined by the Court. If the applicant/accused is released on bail, he will pressurize the remaining witnesses and tamper to the prosecution evidence. Hence, on these reasons, DGP for the State prayed that application be rejected.

5- Notice came to be issued to the victim and she has filed orally submitted before the Court that there is danger to her life and if the accused is released on bail, he will tampering to the other witnesses. Hence, lastly victim submitted that application be rejected.

6- Perused application and say. Heard learned counsel for applicant/accused and learned DGP for the State. Perused written notes of argument (Exh.217) filed by applicant. Perused charge-sheet and entire case papers. Heard the victim.

7- The learned counsel for the applicant argued that applicant is in magisterial custody since last more than three years. Hence, as per Section 436-A of Cr.P.C., he is entitled to be released on bail. In support of this submission, he relied upon a case of prosecution in **In re News Reports Published in the Times of India V/s State of Bihar & Ors.** decided in **CWJC No.7363 of 2006** dated 14/08/2006 by Hon'ble Patna High Court, wherein Hon'ble Patna High Court held that ;

“ We have heard the learned Additional Advocate General, as well as, the learned amicus curiae and have enjoyed the benefits of their suggestions which were taken on record.

Section 436-A of the Code, as introduced by the amendment, reads as under ;

“436-A. Maximum period for which an under trial prisoner can be detained. Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties :

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one half of the said period or release him on bail instead of the personal bond with or without sureties ;

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation – *In computing the period of detention under this Section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded. ”*

3. In view of the submission and written suggestions, we propose to pass the following directions for efficacious enforcement of the benevolent provision of Section 436-A of the Code:

(i) Where any Under Trial Prisoner (U.T.P.) is entitled to the benefit of the provisions of Section 436-A of the Code, quoted herein above, the Superintendent of the Jail concerned where the UTP is in custody shall inform such person or persons about such entitlement and his right with a written intimation to the Presiding Officer of the Court concerned where he is proposed to be tried, as well as, the Jail Cell, which we propose to constitute herein below under the auspices of the Bihar Legal Services Authority. The Jail Superintendent and the Jail Cell shall ensure that the requisite actions are immediately taken for the enforcement of the aforesaid provisions in favour of those inmates who are eligible for the same as also to provide legal aid to the needy UTP in terms of the provisions of the Legal Services Authority Act, 1987, as well as, Rules and Regulations made thereunder by the Bihar State

Legal Services Authority Act.

(ii) We request the Member Secretary of the Bihar State Legal Services Authority to place this matter before the Hon'ble Executive Chairman of the Bihar State Legal Services Authority for the purpose of constituting a Jail Cell for the Districts, as well as, for the Sub-Divisions where the Legal Services Committees are functioning. It will be within the discretion of the Hon'ble Executive Chairman to decide the number of members of such Jail Cell and to cast duties on them and they will also have discretion to direct the Jail Authority to assist the Jail Cell for expeditious implementation of the aforesaid provisions of Section 436-A of the Code.

(iii) The Jail Cell or the Authority or the Committee concerned shall have free hand in evolving the procedure so as to regularly monitor such cases of UTP who, in course of time, may become entitled to the benefits of provisions of Section 436-A of the code and to give effect to them the Jail Superintendent, as well as, the District Authorities shall be rendering assistance as and when required by the District Legal Services Authority, Sub-Divisional Legal Services Committee or the Jail Cell."

8- I have gone through ratio laid down in above cited case and direction given in the above cited case. With due respect I would like to state here that Section 436-A of Cr.P.C. clearly states that said Section is not applicable for an offence for which punishment of death has been prescribed as one of the punishment under that law. In this case, there is charge of offence under Section 302 along with 120-B of IPC and punishment of death is prescribed for the offence punishable under Section 302 of IPC. Hence, Section 436-A of Cr.P.C is not applicable to the case in hand.

9- The learned counsel for the applicant also argued that the Magistrate should complete the trial within 60 days of its starting the evidence failing which the provisions of Section 437(6) of Cr.PC are mandatory. Hence, applicant is entitled to be released on bail. In support of this, he relied upon a case of **Ram Kumar @ Raj Kumar Rathore V/s The State of Madhya Pradesh** reported in 2000(3) crimes wherein Hon'ble Madhya Pradesh High Court held that ;

“Looking to the provision referred to above it is but clear that it is mandatory in nature, and the mandate is that if the Magistrate is trying a case in which the accused has been charged for a non-bailable offence and the trial has not concluded within a period of sixty days from the first date of recording the evidence in the case and that the accused had remained in custody during the whole of such period of sixty days, then he becomes entitled to be released on bail, provided of course, the Magistrate does not reject the same recording in writing his reasons therefor. Circumscribing the undisputed factual circumstances in the ambit of the provisions of Section 437(6) of the Code of Criminal Procedure it is apparent that they hold the field and apply here from all four corners. In rejecting the bail application of the petitioner the learned trial Magistrate and the learned Fourth Additional Sessions Judge, Gwalior, have no doubt given their reasonings as required under the above provisions of the Code of Criminal Procedure but they are simply to the effect that if the petitioner were to be released then it is doubtful that he would be attending the Court on each and every date fixed by the Magistrate. These reasonings indicating the apprehension of the learned Courts below, by no stretch of imagination, could be termed as judicious, and therefore, they are not of such a nature as to thwart and wash off the mandatory character of the provisions of Section 437(6) of the Code of Criminal Procedure. I am of the

considered view that the statutory right given to the accused by the above provisions cannot be taken away in such a fashion. Since the petitioner had althrough remained in custody during the said period of more than sixty days from the first date fixed for recording the evidence, he would be deemed to have been clothed with the right to be released on bail. The rejection of his application under Section 437(6) of the Code of Criminal Procedure by the learned trial Magistrate and later the dismissal of his revision petition by the learned Fourth Additional Sessions Judge, Gwalior, was nothing but the abuse of the process of Court and had given rise to the miscarriage of justice. ”

10- I have gone through ratio laid down in above cited case and direction given in the above cited case. With due respect I would like to state here that above ratio is relating to the trial pending before the Magistrate and not before the Sessions Judge. Hence, above cited case is not applicable to the case in hand.

11- The learned counsel for the applicant also argued that if there is no one in the family to look after the business of applicant/accused, bail can be granted on that ground. In support of this, he relied upon a case of **Aman Gaur V/s State** decided in **Bail Application No.700/2011** dated 23/11/2011 by Hon'ble Delhi High Court held that ;

“ The petitioner’s sister is also stated to have been divorced after the arrest of the petitioner and she is stated to be living with the mother and wife of the petitioner. It has been stated that in the absence of any male member, the petitioner’s family have not been able to attend the business and it has gone into losses. I feel that these factors are also relevant which have persuaded the Court to extent the benefit of grant of bail so that the family is able to attend to business and generate

income, which is very essential for survival”.

12- I have gone through ratio laid down in above cited case and direction given in the above cited case. With due respect I would like to state here that the ratio laid down in above cited is not applicable to the case in hand because 7/12 extract of land filed by applicant in support of this application shows that in the column of crop for the year 2023-24 the entry of Cotton crop was taken to be recorded. It means, the land is cultivated by the co-sharer of the applicant/accused. It means, the land owned by the applicant/accused along with other co-owner is not a barren and it is in cultivation.

13- The learned counsel for the applicant also argued that while deciding bail application, Court should not consider the case of merit in detail. Only prima-facie satisfaction of the Court is required. In support of this, he relied upon a case of **Amit Jogi V/s State of Chattisgarh and Ano.** reported in **2006(3) crimes 350** wherein Hon'ble Chattisgarh High Court held that ;

“21. So far in the trial all material witnesses to prove the charge of criminal conspiracy and murder of Ram Avtar Jaggi by Chiman Singh in pursuance of the said criminal conspiracy have been examined and only the formal official witnesses are yet to be examined by the prosecution. From the quality of the evidence so far adduced by the prosecution to prove the charge of criminal conspiracy and the murder of Ram Avtar Jaggi by Chiman Singh in pursuance of that criminal conspiracy, it cannot be said that there is a prima facie evidence against the applicant to prove his involvement in the alleged crime.

22. Unfortunately, the trial Court did not complete the trial within the time specified by this Court vide its order dated 23-9-2005. The learned trial Judge had sought extension of time by six more months to

conclude the trial. Therefore, this Court vide its order dated 27-4-2006 in Misc. Criminal Case No. 766 of 2006 extended the time up to the end of September, 2006 and while doing so, the Court called for a report from the learned trial Judge as to why the trial could not be concluded within six months specified by this Court. Even now a doubt is expressed as to whether the trial Judge would be able to conclude the trial within the extended time of six months. Be that as it may, having perused the materials placed before the Court, there is nothing to show that the applicant accused or other accused were responsible or contributed anything for the delay in the trial. It is true that the delay in trial itself would not be a valid ground to grant bail to an accused in a non-bailable offence, but, delay in trial certainly will be a relevant circumstances to be considered by the Court along with other relevant grounds urged for grant of bail. ”

14- I have gone through ratio laid down in above cited case and direction given in the above cited case. With due respect I would like to state here that ratio laid down in above cited case is not applicable to the case in hand because in this case, there is evidence against the applicant about he has assaulted the deceased by means of stone on her head, clothes of applicant and piece of cloth which was used for muffling the face of deceased are recovered from the applicant. There is extra judicial confession about there is involvement of the applicant in said crime and there is active role of the applicant in said crime. In all 24 witnesses are examined in this case. Some witnesses relating to material circumstances are yet to be examined.

15- Upon going through record, it appears that, as per applicant, he has only made two bail applications, however, applicant

has already filed two bail applications and this is third bail application, only some witnesses remain to be examined is not change in circumstance to file the present application. No doubt, Hon'ble High Court directed this Court to dispose off the case within reasonable time. However, during trial, bail application and other applications have been moved by the co-accused, sometimes witnesses do not appear, sometimes summons were not serve upon the witnesses, sometimes DGP for the State was engaged in another time bound Sessions Trial, sometimes counsels for the accused were not available and sometimes this Court is also busy in other under trial matter and other cases, therefore, without co-operation of prosecution and accused trial could not concluded within reasonable time.

16- Hence, considering the record, it reveals that, this applicant has taken active part in commission of crime by assaulting to the deceased by means of stone on her head by engaging in criminal conspiracy with co-accused and seizure of cloth from the applicant and extra judicial confession against the applicant, applicant is not entitled to be released on bail. Hence, if the applicant is released on bail, there is possibility of tampering to the prosecution witnesses and evidence. Hence, on these reasons and in the light of above discussion, application is liable to be rejected. Hence, I pass the following order.

ORDER

Bail application (Exh.190) is hereby rejected.

Date : 18/06/2024.

[N. G. Satpute]
Additional Sessions Judge - 3,
Parbhani.