

MHPA010012172023



ORDER BELOW EXH. 9 IN SESSIONS CASE NO.86/2023

The State Vs. Balaji S/o. Nivrutti Bandgar
{Passed on 19th June, 2023}

Applicant-accused Balaji Nivrutti Bandgar filed this application for regular bail under Section 439 of Cr.P.C. in Crime No.05/2023 registered at police station Tadkalas, tq. Purna, Dist. Parbhani for the offence punishable under section 302, 363, 364, 201, 120(b) read with Section 34 of the Indian Penal Code.

02. Perused application and say. Heard Learned Advocate Mr.M.E.Bhosle appearing for the applicant-accused and Learned Additional Public Prosecutor Mr. B.B.Ghate for the State.

03. In brief, it is contention of the the Learned Advocate appearing for the applicant-accused that he has not committed any offence. He is ready to abide all the conditions if any, imposed by this Court. Therefore, he be released on bail.

04. It is further contention of the Learned Advocate appearing for the applicant-accused that the applicant-accused is falsely involved in the crime. He is 70 years. The applicant-accused had filed previous bail vide Criminal Bail Application No.110/2023 and it is rejected on 18.03.2023. The Learned Advocate appearing for the applicant-accused also submitted that now the charge-sheet is filed on 03.04.2023 and hence there is no question of hampering and tampering the prosecution witnesses. The Learned Advocate

appearing for the applicant-accused further submitted that applicant-accused is 70 years old. He was not at all in the village on the day of alleged incident. There is no evidence to connect the applicant-accused with the said crime. Therefore, applicant-accused be released on bail.

05. Per contra, it is contention of the Learned Additional Public Prosecutor that offence is serious. Applicant-accused is involved in the commission of offence. If he is released on bail he may hamper and tamper the prosecution witnesses. Therefore application be rejected.

06. It is further contention of the Learned Advocate appearing for the applicant-accused that applicant-accused is in jail since **17.01.2023**. He is ready to comply order of the Court. Therefore, he be released on bail.

07. It is contention of Learned Additional Public Prosecutor which appears from his say filed on this application on 13.06.2023 that applicant-accused is involved in the commission of offence. He has played vital and active role in the commission of offence. Applicant-accused and other two accused persons buried child Govind. Dead body of child Govind is recovered from the house of applicant-accused persons. Present applicant-accused and other two accused persons committed the said crime pre-planned. Witnesses also stated as per the case of the informant their statement recorded under section 161 of Criminal Procedure Code. The Medical evidence is on record. Therefore application be rejected.

08. The Learned Advocate appearing for the applicant-accused submitted that informant is Ganesh. Wife of informant is Mahananda. Mahananda says deceased Govind and her daughter went to school. Timing of going to school is not mentioned. Informant Ganesh says Mahananda was at home till 01.00 p.m. Mahananda says he was working in the field till 2.00 p.m. There is no corroboration between the informant and Mahananda.

09. The Learned Advocate appearing for the applicant-accused further submitted that all the witnesses are relatives and nearest persons of the informant. Statement of all the witnesses recorded under Section 161 of the Code of Criminal Procedure is similar. Statement of shop keeper Datta Ashok Dhotre is recorded. Statement in FIR and statement of shop keeper Datta Dhotre is not same and similar. All witnesses say under Section 161 of the Code of Criminal Procedure accused Kaveribai went at 04.00 p.m. for bringing tea. Shop keeper Datta says children had come at 04.0 p.m. Therefore as to how children went in the field is missing link. FIR is false regarding biscuits. As per the statement of witness shop keeper Datta, it appears that statement of Ganesh, statement of Mahananda and statement of wife of other brothers of informant are false in respect of Govind. The Learned Advocate appearing for the applicant-accused further submitted that spot of incident is 13.01.2023. It is prepared between 10.00 am to 11.00 am. Informant Ganesh showed the spot of incident. The contents of spot panchnama and FIR are not similar. Therefore there is doubt about happening of the incident.

10. The Learned Advocate appearing for the applicant-accused submitted that in fact this case is out put of media trial as news had published in different news papers. False case is made out of the incident of death of husband of Kaveribai prior to seven years. If present accused person and other accused persons intent to kill any family member and teach lesson to the family of informant then the applicant-accused and other accused persons could have committed crime by killing child of brother of other brothers of the informant. Other brothers of the informant have children. Therefore there is no force in the case of prosecution that accused persons committed murder of Govind to take revenge of the death of husband of accused Kaveribai. It is further contention of the Learned Advocate appearing for the accused persons that false and concocted story is mentioned under Section 27 of the Indian Evidence Act to bring accused persons in false crime.

11. It is further contention of the Learned Advocate appearing for the applicant-accused that even dog squad could not tress Govind. False FIR is filed. Time of death is not mentioned in the post-mortem report. There is no eye witness. Case of the prosecution rest on circumstantial evidence.

12. It is further contention of the Learned Advocate appearing for the applicant-accused person that statement of Munja is recorded under Section 161 of the Code of Criminal Procedure on 13.02.2023. Munja is elder brother of informant Ganesh. Datta Dhotare is relative of informant Ganesh. Statement of Datta is recorded under Section 161 of the Code of Criminal Procedure Code on 17.02.2023. Statement of accused Kaveribai under Section 27 of the Indian Evidence Act on 14.02.2023.

13. It is further contention of the Learned Advocate appearing for the applicant-accused that if the case of prosecution is accepted regarding taking revenge of death of husband of Kaveribai who prior to 7 years, in that contingency applicant-accused and other accused persons could have killed any child of other three brothers of the informant even prior to 7 years. It is contention of the Learned Advocate appearing for the applicant-accused that house number of the accused person is not mentioned in the spot panchnama as well as seizure panchanama. There is correction in date. No witness stated under Section 161 of the Code of Criminal Procedure and Section 164 of the Code of Criminal Procedure that which cloths were on the person of Govind and which ear rings were to ears of Govind.

14. It is further contention of the Learned Advocate appearing for the applicant-accused that wife of informant and wife of three brothers of informant used to go to the field of accused persons for work. It means, there were no strange relations between accused persons and the informant and the brothers of informant. Therefore false story is prepared and accused persons are falsely involved in the case. Statement of Mahananda and statement of informant Ganesh in FIR are not matched to each other. Therefore applicant-accused be released on bail. It is further contention of the Learned Advocate appearing for the applicant-accused that story in spot panchanama and story in FIR are not consistent to each other. As per one stand of prosecution informant Ganesh was in the field. Then as to how he went to the spot of incident. Therefore, applicant-accused released on bail.

15. The Learned Additional Public Prosecutor submitted that dead body is recovered from the house of accused persons. It is pre planned murder. Not only applicant-accused but remaining accused persons also played active role. There is motive for the commission of offence. The spot of incident i.e. field is near the village and children can go to the field. There was revenge in the mind of Kaveribai because her husband died prior to 7 years and therefore accused persons committed the said crime.

16. Perused FIR. FIR is lodged on 13.01.2023. It is alleged in the FIR that informant Ganesh Bhimrao Dhotre is resident of Sidheshwar Nagar, Tq. Purna, Dist. Parbhani. He resides there with his wife and their children. He has two daughters and a son. Name of his daughter is Radha of 7 years and name of second daughter is Vedika age 4 years. He has son namely Govind age 3 years. They do agricultural work and carry their livelihood. On 12.01.2023 he had been to his own field to work at about 08.30 a.m. His wife Mahananda also had been to the field of Balasaheb Nivrutti Bandgar for labour work at 10.30 a.m. Children went to the school. He returned to home at 01.00 p.m. for meal. At that time his children had come to the house. His wife Mahananda was taking meal. He, his wife and children took meal together. Thereafter he and his wife went to their respective work. Thereafter, Vedika and Govind went to his wife Mahananda where he was working in the field. At about 05.30 p.m. his son Govind and his daughter Vedika returned to the home. Vedika and Govind ate biscuit and they took tea at the house of Balasaheb Nivrutti Bandgar and went towards house. After some time, Vedika went to him and told him that Govind did not return. Thereafter he immediately went to house. He searched

Govind here and there and returned home. At about 06.00 hours Ranjana Bhojaji Dhotre sister-in-law mobiled him on his mobile number and informed everything and he immediately went to the house. He, Dashrath Devkate, Lobhaji Reshmaji Gabhale and his brother Eknath Dhotre all searched here and there in the village to Govind but his son Govind did not tress out. Therefore, he went to the police station and lodged report that some unknown persons kidnapped his son. Consequently, aforesaid crime is registered.

17. It is contention of the Public Prosecutor and investigating officer that during investigation, investigating officer recorded statement of witnesses. He prepared spot panchnama. Search of Govind was going on through other police stations. Public notice was issued in the news paper regarding missing of said Govind. Missing notice was affixed at public places. Missing of Govind is informed to all the beat Amaldars for search of Govind. Mobile number, CDR/SDR and tower locations of suspected persons collected. Search was carried out here and there. Search was also carried out at backside house of the suspected person's house situated at village Sidheshwar at Kalgaon. Search was also taken in the crop of sugarcane behind the house of the suspected person and nearby places, well Etc. Inquiry was carried out with Kaveribai as a suspect.

18. It is further contention of the Public Prosecutor and investigating officer that during inquiry Kaveribai stated that her husband Gajanan Bandgar was injured and died prior to seven years at the time of doing digging work of well in the field of informant and his three brothers. Kaveribai and others had doubt that informant killed Gajanan, but they did not lodge report. **She, her**

father-in-law Balaji Bandgar (applicant-accused), her mother-in-law Annapurnabai were annoyed that a young man of their family is killed and they decided to take revenge at suitable time. Mahananda Ganesh Dhotre has two children namely daughter Vedika age 4 years and Govind age 3 years. The two children were small persons in the family. Therefore, it was decided to kill one out of two. He had brought the said two children near to her, applicant-accused and wife of applicant-accused by giving them biscuit packets. Applicant-accused and wife of applicant-accused tried to kill one out of said two earlier but in vein. Inner cultivation in the field of sugar cane was going on. For the purpose of inner cultivation in the field Chhayabai Dhotre, Manahanda Dhotre and Shobhabai Dhotre used to come. Vedika and Govind also used to come with them. Therefore, it was decided to kill one out of two. Chhayabai Dhotre, Manahanda Dhotre and Shobhabai Dhotre were coming regularly. Children were also coming regularly. Therefore, on 11.01.2023, she, applicant-accused and wife of applicant-accused decided to kill the said children on 12.01.2023. Applicant-accused told if he remains in the house then people will raise doubt and people will beat them. He also said if females are at home nobody will raise doubt therefore he decided to go on following day to Banegaon. As planned applicant-accused went to Banegaon 08.a.m. on 12.01.2023. Kaveribai and wife of applicant-accused were waiting for children. Chhayabai Dhotre, Manahanda Dhotre and Shobhabai Dhotre came as usual for internal operation in the field. Kaveribai also joined them. At about 02.00 p.m. all went to their respective home for meal and returned at 03.00 p.m. for work. Kaveribai was knowing that when school is going on, the said children come in the afternoon. Wife of applicant-accused sent Kaveribai at house for bringing tea for her.

19. It is further contention of the Public Prosecutor and investigating officer that therefore, Kaveribai went to the house. Vedika and Govind were at the house. She prepared tea and filled in the box. She came in the said field at the place of work at Govind and Vedika. At the time of drinking tea, Govind was demanding biscuit packet to the wife of applicant-accused and therefore wife of applicant-accused gave Rs.20/- to Kaveribai to handover it to said children. Therefore, Kaveribai, Govind and Vedika went to the house. Kaveribai gave Rs.20/- to Vedika. She told Vedika to bring two biscuits packets and two Kurkure packets. Govind and Vedika were sitting in front of house in the courtyard. Vedika went to her house to bring water. Govind alone was with Kaveribai. Kaveribai felt that this is good opportunity therefore, she went backside the house at ship shed (Gotha). She called Govind. They went to the said ship shed (Gotha). Kaveribai saw here and there. Nobody was there. Therefore she immediately brought one rope and tied both hand of Govind and inserted cotton into the mouth of Govind. She tied Govind tightly. She lifted Govind. She carried Govind and she kept Govind in big box in the Devghar and went to the field to the said woman farmers. Vedika came to the field. She was saying to Mahanandabai that Govind is not appearing and where is Govind. At that time Kaveribai saw towards her mother-in-law i.e. wife of applicant-accused. Mahanandabai and Vedika went to the village to search Govind. Kaveribai and her mother-in-law completed work in the field. They told to Shobhabai and Chhayabai to go respective house. Shobhabai and Chhayabai went to their house. Kaveribai told his mother-in-law that she tied hands of Govind and inserted cotton into the mouth of Govind and kept Govind in the Devghar's house in

one box. During late night, Kaveribai and his mother-in-law dug a pit with the help of sickle in the said Devghar and they opened the box where Govind was kept. They found that Govind was alive but unconscious. She took out Govind from the box and she held both the hand of Govind tightly. Her mother-in-law tied throat of Govind by rope. She kept tighting throat of Govind for some time. Govind died. Mother-in-law of Kaveribai took out ear rings of Govind. She also took out green colour shirt from the person of Govind. Mother-in-law of Kaveribai put said ear rings and said shirt in the pit and put soil on it and buried Govind in the said pit. She also put soil on Govind in the said pit. Two cement tiles (Farsha) kept on the said pit.

20. According to prosecution applicant-accused made a plan in collusion with other two accused and they committed said crime to take revenge that husband of Kaveribai was killed by family of the informant.

21. Dead body is recovered from the house of accused persons. According to case of prosecution wife of informant and wife of three brothers of informant used to go to the field of accused persons. Though charge-sheet is filed, I am of the opinion that the role of the applicant-accused is vital one. Dead body is seized from the house of the applicant-accused. Therefore it is not fit case to release the applicant-accused even though the charge-sheet is filed. Hence, application is liable to be rejected. Hence, following order.

O r d e r.

	Application Exh.9 filed by accused Balaji S/o. Nivrutti Bandgar under sec. 439 of Cr.P.C. for regular bail for the offence punishable under Section 302, 363, 364, 201, 120-B read with Section 34 of Indian Penal Code is hereby rejected.
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Date:19.06.2023.

(S.G.Borlepwar)
Additional Sessions Judge-4
Parbhani.

Dictated on 19.06.2023
Typed on:26.06.2023
Draft has given for checking
on 28.06.2023.
Checked on:28.06.2023
Signed on: 28.06.2023.

(S.G.Borlepwar)
Additional Sessions Judge-4
Parbhani.