

Session Case No. 157/2019
CNR No MHPU01-003035-2019
State of Maharashtra
Vs.
Yogesh Murkute and ors.
Order Below Exh 15

Accused No. 2 Bhausaheb Malvadkar has filed this application for temporary bail in view of the guidelines of Hon'ble High Power Committee dated 11.5.2020 in the backdrop of the outbreak of COVID 19 pandemic.

2] The accused are alleged to have committed an offence under Section 302, 201, 365, 323 r/w 34 of Indian Penal Code. The offence is registered against accused with Lonikand Police Station vide CR No.955/18.

3] Perused application, reply and all other relevant documents.

4] It is the case of prosecution that on 29.8.2018 at 19.00 hours between village Wagholi to village Kesnand and Vadgaon Bhand, Daund, District Pune all accused in furtherance of common intention kidnapped Balasaheb Murkute and murdered him by strangulating. The accused later on dumped the dead body in river Bhima with an intend to destroy evidence.

5] By virtue of this application the accused is praying to grant him temporary bail as there is outbreak of corona virus. The accused is further relying on the guidelines issued by the Hon'ble

High Power Committee regarding release of accused on temporary bail. Accordingly, prayer is made for release of accused on temporary bail.

6] Application is resisted by learned APP. It is submitted that the alleged offence is most serious in nature having punishment of life imprisonment or death. Further, there is possibility of absconding and tampering prosecution evidence, if accused is released on bail. Accordingly, request is made to reject the application.

7] Its a worldwide known fact that there is serious spread of deadly Corona Virus. The lockdown was declared to prevent spread of virus. In spite of lockdown there is increase in number of COVID 19 patients. All possible efforts are made to contain the spread of Corona Virus. Decongestion of jail is one of them.

8] The main reason highlighted in this application is the dangerous situation that has arisen due to spread of Corona Virus. It is submitted that inmates of jail are vulnerable and susceptible to Corona Virus and there is risk to the life of inmates. Further it is stated in application that the mother of accused is very ill and there is no one to take her care. For this only reason the prayer of temporary bail is insisted.

9] In order to deal with situation, Hon'ble High Power Committee issued guidelines dated 25.3.2020 which reads as follows - "The prisoners who fall in the class or the category

spelt out by this decision will be entitled to be released in accordance with law in considering every case for such reliefs, the nature of offence and the severity of offence shall be considered. The possibility of the prisoner committing offence in case of temporary reliefs such as habitual offenders or livelihood of his / her absconding should also be considered as important tests to decline such requests for temporary release. Moreover, by virtue of corrigendum dated 18.5.2020 Hon'ble High Power Committee made it clear that every case has to be considered on its own merits so as to decide the desirability of temporary release of such prisoner. Such decision is to be taken case by case.

10] There can not be dispute pertaining to fact that due to over population of jail there are chances of spreading and infecting Corona Virus. However, this cannot be an important ground in itself for grant of temporary bail, unless the same is viewed with utmost circumspection and other associated facts of the matter.

11] The FIR is given by Mayur Murkute. He has stated in specific terms that there were disputes between them and accused for the reason of removing names from the revenue record. As result of this dispute accused committed murder of Balasaheb Murkute by strangulating him and caused the evidence to disappear.

12] It is evident from above facts that the accused have

committed murder with full knowledge and intention. Though the civil suit was pending, the accused had no patience to wait for the decision of the court. On the contrary, they chose to take the law in their hands and committed the most serious crime of murder. The conduct, behaviour and attitude of accused dis-entitles them from any relief.

13] Moreover, in the instant matter the first informant had filed an application below Exh. 17 making prayer to not grant bail to accused. It is complained that the accused and relatives are threatening and pressurizing complainant and other witnesses. The complainant has also filed non cognizable complaint of this fact with Lonikand Police Station. It is explicit from this fact of the matter that accused and their relatives have no respect and regard towards court and other systems. In this situation if accused are released on bail, they then they can certainly create law and order situation. Hence, the accused cannot be accorded with any relief.

14] Though the guidelines of High Power committee empower court to grant temporary bail to accused in the backdrop of COVID 19 outbreak, the guidelines further show that every case has to be viewed independently. The benefit of guidelines of High Power Committee cannot be given in blanket manner. Though there is serious situation of COVID 19 outbreak every care has been taken by Government, Jail Administration etc. to prevent spread of virus. So, the guidelines of Hon'ble High Power Committee cannot form a sole basis in the instant matter

to grant temporary bail to accused. Further, I strongly concur with the objection of learned APP that there is possibility of abscondance of accused and tampering of prosecution evidence. Hence, following order is passed :

ORDER

1. Application Exh. 15 is rejected.
2. Inform jail authority accordingly.

Pune.
Date : 28.5.2020

(V.P. Adone)
Additional Sessions Judge, Pune.