

ORDER BELOW EXHIBIT 61 IN S.C. NO. 96/2019
(STATE VS. DADA @ RHISHIKESH)
(PASSED ON : 28/06/2021)

Nature of the Application.

1. This is successive application filed by the accused-Dada @ Rhishikesh Navnath Gaikwad (for short 'accused') seeking interim bail under Section 439 of the Code of Criminal Procedure in Crime Register (for short 'C.R.') No. 369/2019 registered at Mangalwedha police station under Section 302, 363, 364, 201, 120-B of the Indian Penal Code (for short 'I.P.C.').

Contents in the Application.

2. The accused has contended that he is in jail.
3. He be released on personal bond for a period of 45 days considering the Covid-19 Epidemic. He is ready to abide by the conditions imposed.
4. On these grounds the accused has prayed to grant the application.

Contents in the Reply of the Additional Public Prosecutor.

5. The Additional Public Prosecutor (for short 'A.P.P.') has filed reply (Exhibit 62).
6. The A.P.P. has strongly objected the application. He has contended that there is sufficient evidence against the accused. The case is likely to be decided within a short period.
7. If released on bail, the accused will threaten the informant and witnesses.
8. On these grounds the A.P.P. has prayed to reject the

application.

No Reply of the Investigating Officer.

9. The Investigating Officer (for short 'I.O.') has failed to file reply.

10. Hence, application proceeded without reply of I.O.

The Arguments.

11. I have heard Shri. S. P. Shinde, advocate for the accused and Shri. S. V. Wangikar, A.P.P for the prosecution, in extenso.

12. They argued in consonance with the contentions in the application, say and referring the documents produced on record. In order to avoid repetition it is not necessary to note those arguments.

Points and Findings.

13. Upon hearing the following points arise for my consideration and I record my findings thereon as under for the reasons to follow :-

	Points	Findings
1)	Whether a case has been made out by the accused for granting the relief of interim bail, as prayed for ?	No.
2)	What order ?	Application Rejected.

Directions of the Hon'ble High Power Committee and Relevant Judgment of the Hon'ble Bombay High Court.

14. In the corrigendum dated 18th May 2020 the Hon'ble High Power Committee constituted vide GR No. JLM0320/CR58/Prison-2 dated 24th March, 2020, has specifically clarified that in the light of the various minutes of the meeting of the Committee and the consequent

determination of class and/or category of cases of prisoners eligible for temporary release, **case of every prisoner has to be considered on its own merits so as to decide the desirability of temporary release of such a prisoner. Such decision is to be taken on case-to-case basis.**

15. The directions of the Hon'ble High Power Committee dated 14/05/2020 read as follows :-

"It is clarified that rest of clauses (iv) to (x) of the decision dated 25/3/2020 of this Committee shall apply and shall form the part of the present decision ".

16. The directions of the Hon'ble High Power Committee dated 25/03/2020 read 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 the offence and severity of the offence shall be considered. The possibility of the prisoner committing offence in case of temporary reliefs (such as habitual offenders or likelihood of his/her absconding should also be considered as important tests to decline such request for temporary release."

17. The directions of the Hon'ble High Power Committee communicated by the Maharashtra State Legal Services Authority vide letter No. MSLSA/2021/1024 dated 11/05/2021 read as follows :-

"(i) The decisions taken in the IIPC meetings dated 25th March, 2020 and 11th May, 2020 read with Corrigendum dated 18th May, 2020 setting out the category of prisoners to be released on interim bail or emergency parole are reiterated and shall continue to operate".

18. In the case of Mahesh B. Patil Vs. State of Maharashtra, LD VC Bail Application No. 49 of 2020, the Hon'ble Bombay High Court has observed :-

"In view of the directions dt. 25/03/2020 the applicant cannot claim benefit by the directions dated 14/05/2020. It would be necessary to also take into consideration the merits of the matter, the gravity of the offence and the attitude of the accused of indulging into criminal activities despite preventive measures, the applicant cannot take benefit of the circular dated 14/4/2020 and does not deserve temporary bail."

Reasons as to Point Nos. 1 and 2.

19. In the first information report (for short 'F.I.R.') lodged by Dattatray Suresh Pujari (for short 'informant') against the accused and the other accused, it is alleged that he by joining hands with other accused kidnapped Santosh Shinde (for short 'Santosh') on 29/07/2019 from Mangalwedha Bus Stand at about 16.30 hours. Santosh was made to drink liquor by him and other accused and was taken by them in a Car to Alkunte Nagar, District Vijapur and was killed by them by assaulting with stones. Under such circumstances when Santosh is killed brutally by the accused, it cannot be said that he is falsely implicated in the offence.

20. There is no dispute that the closed circuit television footage is recovered from the S.T. Stand, Mangalwedha in which it is clearly seen that Santosh was in the company of the accused. The accused is identified as the person who was last seen with Santosh. The accused has failed to clarify his presence with Santosh that too before the incident. The statements of the witnesses proves that the

accused is involved positively in killing Santosh, prima-facie. Therefore, it cannot be said that the accused was not involved in killing Santosh.

21. In view of all the facts and the intention gathered from all the circumstances it could be said that case is made out under Section 302 of the I.P.C., prima-facie.

22. Admittedly, the previous bail applications filed by the accused are rejected, on merit. While rejecting his previous bail applications, it is observed that there is sufficient evidence against the accused proving his positive involvement in the offence with which he is charged and therefore, he is not entitled for interim bail.

23. After considering the facts and circumstances and the role played by the accused in commission of crime it is clear like cloudless sky that the accused has committed an offence under Section 302 of the I.P.C. which is of serious nature. There is sufficient evidence against the accused, prima-facie. Therefore, the accused does not deserve to be enlarged on interim bail.

24. I am unable to persuade myself with the argument advanced by Shri. Shinde, advocate for the accused that the accused is entitled for interim bail because (i) he is not involved in any criminal activity (ii) he is falsely implicated in this case with ulterior motive and (iii) due to Covid-19 his health is in danger. The reasons are :-

- That positive involvement of the accused is brought on record that he killed Santosh, prima-facie.
- That the offence alleged to have been committed by the accused is very serious.

- That the possibility of the accused tampering with the witnesses cannot be ruled out considering his involvement and the nature of offence.
- That this is interim bail application filed by the accused relying on the directions of the Hon'ble High Power Committee but considering the directions also the accused is not entitled for interim bail.
- That considering my discussion, supra.

25. To sum up, the offence with which the accused is charged is of serious nature. **There is prima-facie evidence to hold accused's involvement in the offence** (emphasis supplied). The facts disclosed from the final report would show that the evidence collected is sufficient to constitute an offence under Section 302 of the I.P.C. as well as positive involvement of the accused. If the application is granted it will hamper the trial. The involvement of the accused in the crime registered against him is clear.

26. **Considering the merits of the matter, gravity of the offence and positive involvement of the accused, he does not deserve temporary release on interim bail. If that be so, there is no other alternative before me than to take a similar view which was taken while rejecting his earlier applications for bail.**

27. In view of the above-mentioned facts and circumstances of the case, I am declined to grant interim bail to the accused.

28. I leave open the contentions of the parties on the merits of the trial.

29. Accordingly, I answer point No. 1 in the negative and point

No. 2 as application rejected.

29. In the result, following order :-

ORDER

The application (Exhibit 61) is rejected.

(Pronounced in the open Court).

Date : 28/06/2021.

(M.B.Lambe)
Additional Sessions Judge,
Pandharpur.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order is same word to word as per the original Order.

- (a) Name of the Stenographer : Sou. M. M. Kulkarni
- (b) Court : M. B. Lambe,
District Judge – 1 &
Addl. Sessions Judge, Pandharpur.
- (c) Order signed by P.O. on : 28/06/2021
- (d) Order uploaded on : 29/06/2021