

**IN THE COURT OF THE SESSIONS JUDGE, YAVATMAL**

*(Presided over by Shri K.R.Pethkar)*

**S.T.No. 49/2019**

**[CNR No MHYA010008002019]**

**State of Maharashtra -Vs- Kiran and others**

**Order Below Exh.47**

**[Passed on this 6<sup>th</sup> Feb. 2020]**

1.. Heard learned Advocate Shri Chamediya for the accused Gajanan and learned A.P.P. Shri Pande for the State. This is an application for regular bail under section 439 of Cr.P.C. in Crime No. 219/2018 under section 120-B r/w 302 r/w 34, registered in Yavatmal City Police Station on the basis of report of the first informant Anjali Mangulkar.

2.. The first informant states that her husband Sachin used to do business of sand alongwith Kiran Khadse and Sachin Mahalley. After some days dispute arose in the business between both of them. So her husband Sachin stopped to do the business of sand. One Babu Tayade from Gautam Nagar, Yavatmal used to be in the company of Kiran Khadse and Sachin Mahalley and they used to quarrel with her husband.

3.. On 29-12-1998 in the evening at 6.00 p.m. she herself, Sachin, two sons, mother-in-law, her elder sister Megha they all were in the house. In the evening at 6.15 p.m. Sachin

had conversation on mobile phone with one Subhash Solanki. On completion of conversation Sachin immediately went to Moha fata on the Bullet of his brother. Thereafter she herself alongwith two sons, mother-in-law and sister in the Bollero Jeep came at State Bank Chowk Yavatmal to eat Panipuri. At that time the first informant saw that near Moha Fata her husband was standing and Kiran Khadse, Sachin Tayade and Babu Mahalley were talking with him in a loud voice. After eating Panipuri they returned to their house. In the night at 9.15 p.m. after dinner she herself and her daughter Kasturi went out of house for walking. They heard shout when they reached near the house of Madankar. The first informant and her daughter went ahead and saw that her husband Sachin was lying in pool of blood and Bhima Khade and Gajanan Kumare were having sharp edged weapons in their hands and they were giving blows on the person of her husband. She shouted 'save-save'. Her husband died in the assault. Hence this report.

4.. The State has given say at Exh.55 stating that accused Gajanan has given memorandum under section 27 of the Indian Evidence Act. The offence is of serious in nature. The

applicant will tamper the prosecution witnesses. Hence, application for regular bail may kindly be rejected.

5.. Learned Advocate for the accused has submitted that the applicant/accused is behind the bar. The accused is innocent and his family members are depending on his income. The family members of the accused are starving as he is behind the bars. The statement of the first informant and her daughter are recorded under section 164 of the Cr.P.C. by the Magistrate. The said witnesses did not state the name of accused Gajanan to the Magistrate while recording their statements. The said statements shows that accused Gajanan was not present on the spot at the time of incident. The statements of the said witnesses recorded before the Magistrate shows that police had filed false charge-sheet against accused Gajanan. He has submitted that there is no propriety in keeping the accused behind the bar as the investigation of the crime is completed. He has submitted that the applicant will not abscond and heavy surety be imposed on him while releasing him on bail. He has prayed that the applicant may kindly be released on regular bail.

6.. Learned A.P.P. has submitted that the offence is serious in nature. The applicant has given memorandum to the police and recovery is done from him. The applicant has given confessional statement to the police, which shows that he has committed the offence. He has prayed that application for regular bail may kindly be rejected.

7.. It is pertinent to note that specific role is attributed to the accused Gajanan in the report and in the statement of the first informant recorded before the Magistrate under section 164 of Cr.P.C. no role is attributed to the accused Gajanan. This variance of the statement cannot become the ground for granting regular bail to the accused as he has given memorandum under section 27 of Indian Evidence Act and in pursuance to the said memorandum he has produced knife and axe used in the offence. The possibility of the accused tampering the prosecution witnesses cannot be ruled out in view of variance in the statement of the first informant. The offence is of serious in nature. The variance in the statement of the first informant is a part of appreciation of evidence which will be considered at the time of final hearing. The record shows

prima-facie involvement of the applicant in the offence. The postmortem report shows as to how brutally the murder of Sachin was committed. The capital punishment is provided for the offence punishable under section 302 of I.P.C. In this background the applicant is not entitled for regular bail from the hands of this Court. Hence, I pass the following order.

**Order**

The application for regular bail at Exh.47 is rejected.

Dt/6-2-2020

[K.R.Pethkar]  
Sessions Judge,  
Yavatmal



**IN THE COURT OF THE SESSIONS JUDGE, YAVATMAL**  
(Presided over by Shri K.R.Pethkar)

**S.T.No. 49/2019**  
[CNR No MHYA010008002019]

**State of Maharashtra -Vs- Kiran and others**

**Order Below Exh.50**  
[Passed on this 6<sup>th</sup> Feb. 2020]

1.. Heard learned Advocate Shri Sable for the accused Mithun and learned A.P.P. Shri Pande for the State. This is a second application for regular bail under section 439 of Cr.P.C. in Crime No. 219/2018 under section 120-B r/w 302 r/w 34, registered in Yavatmal City Police Station on the basis of report of the first informant Anjali Mangulkar.

2.. The first informant states that her husband Sachin used to do business of sand alongwith Kiran Khadse and Sachin Mahalley. After some days dispute arose in the business between both of them. So her husband Sachin stopped to do the business of sand. One Babu Tayade from Gautam Nagar, Yavatmal used to be in the company of Kiran Khadse and Sachin Mahalley and they used to quarrel with her husband.

3.. On 29-12-1998 in the evening at 6.00 p.m. she herself, Sachin, two sons, mother-in-law, her elder sister Megha they all were in the house. In the evening at 6.15 p.m. Sachin

had conversation on mobile phone with one Subhash Solanki. On completion of conversation Sachin immediately went to Moha fata on the Bullet of his brother. Thereafter she herself alongwith two sons, mother-in-law and sister in the Bollero Jeep came at State Bank Chowk Yavatmal to eat Panipuri. At that time the first informant saw that near Moha Fata her husband was standing and Kiran Khadse, Sachin Tayade and Babu Mahalley were talking with him in a loud voice. After eating Panipuri they returned to their house. In the night at 9.15 p.m. after dinner she herself and her daughter Kasturi went out of house for walking. They heard shout when they reached near the house of Madankar. The first informant and her daughter went ahead and saw that her husband Sachin was lying in pool of blood and Bhima Khade and Gajanan Kumare were having sharp edged weapons in their hands and they were giving blows on the person of her husband. She shouted 'save-save'. Her husband died in the assault. Hence this report.

4.. The State has given say at Exh.54 stating that accused Mithun has given memorandum under section 27 of the Indian Evidence Act. The offence is of serious in nature. The

applicant will tamper the prosecution witnesses. Hence, application for regular bail be rejected.

5.. Learned Advocate for the accused has submitted that the applicant had filed first application for regular bail at Exh.25 and the same was rejected. The applicant after rejection of Exh.25 filed Criminal Bail Application No. 563/2019 before the Hon'ble Bombay High Court, Bench at Nagpur. The Hon'ble Bombay High Court was pleased to allow the applicant to withdraw the bail with a liberty to move application for bail if there is any change in circumstance in future. The co-accused had filed an application for discharge before this Court and during the course of argument the statements recorded under section 164 of Cr.P.C. of the first informant and her daughter were provided to the applicant. After perusal of the statement recorded by the Magistrate, it is clear that no role is attributed to the applicant. The statement under section 164 Cr.P.C. was not open at the time of deciding first application for regular bail. The applicant was not aware about the same. The statement before Magistrate is at higher footing than the statement before police. This amounts to change in circumstance for filing the

second application for regular bail. He has prayed that applicant may kindly be released on bail.

6.. Learned A.P.P. has submitted that the offence is of serious nature. The applicant has given memorandum to the police and recovery is done from him. There is no change of circumstance as already the statement of the first informant under section 164 of Cr.P.C. was on record at the time of deciding the first application for regular bail.

7.. The first application for regular bail was decided after considering all the incriminating facts which are on record against the applicant. No doubt in the statement before the Magistrate the first informant has not stated the name of the applicant but she has stated the name of the applicant in the report. This variance of the statement of first informant cannot become the ground as a change in circumstance in future, as no one prevented the applicant at the time of hearing of first application for regular bail to rely on the statement of the first informant recorded before the Magistrate. It was the sweet choice of the applicant not to rely on the statement of the first informant recorded by the Magistrate. Now the applicant

cannot take the benefit of his own wrong as there is a recovery of the pant of the applicant stained with blood under section 27 of the Evidence Act. Hence, I come to the conclusion that there is no change in circumstance as alleged by the applicant. The applicant is not entitled for regular bail from the hands of this court. Hence, I pass the following order.

**Order**

The application for regular bail at Exh.50 is rejected.

Dt/6-2-2020

[K.R.Pethkar]  
Sessions Judge,  
Yavatmal





