

ORDER BELOW EXHIBIT 1
IN CRIMINAL BAIL APPLICATION NO. 59/2020
(NIKHIL VS. STATE)
(PASSED ON : 11/03/2020)

Nature of the Application

1. This is second application filed by the accused-Nikhil Sahebrao Patole (for short 'accused') seeking bail under Section 439 of the Code of Criminal Procedure (for short 'Cr.P.C.') in Crime Register (for short 'C.R.') No. 34/2020 registered at Aundha (Nagnath) Police Station under Sections 353, 323, 504, 506, 143, 147 read with 149 of the Indian Penal Code (for short 'I.P.C.').

Contents in the Application

2. The accused has contended that the first information report (for short 'F.I.R.') is registered on the information by the informant-Shriniwas Deshmukh (for short 'informant') and hence C.R. No. 34/2020 is registered against him and other accused.

3. He is innocent and has not committed any offence. He is student. There is no evidence against him. The offence is registered with ulterior motive. He is not involved in the offence, as alleged by the informant.

4. His custodial interrogation is not necessary, anymore. He is ready to co-operate with the police and will not tamper with the prosecution witnesses.

5. On these grounds the accused has prayed to grant the application.

Contents in the Reply of the Investigating Officer

6. The investigating officer (for short 'I.O.') has filed reply through Additional public prosecutor (for short 'A.P.P.').

7. The I.O. has strongly objected the application. He has contended that the accused has committed serious offence. A terror is created in the mind of the public servants due to offence committed by the accused and other accused. The investigation is in progress.

8. If the application is granted, the accused will tamper the evidence, will threaten the witnesses and will create hurdles in the investigation.

9. On these grounds the I.O. has prayed to reject the application.

The Arguments

10. I have heard Shri. J. P. Khandare, advocate for the accused and Shri. N. H. Nayak, A.P.P. for the prosecution, in extenso.

11. 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

12. 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 there is substantial change in circumstances and fact situation after withdrawal of the first bail application by the accused, as alleged ?	Yes.
2)	Whether a case has been made out by the accused for granting the relief of bail, as prayed for ?	Yes.

3)	What order ?	Application Granted. As per final order.
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Reasons as to Point Nos. 1 and 2

13. After going through the F.I.R. it transpires that the accused and other accused used criminal force and deterred the informant from discharging his duty as a public servant and assaulted and threatened him, when he was on duty as public servant.

14. The word 'parity' means the state or condition being equal or on a level; equality; equality of rank or status. In other words it means being placed at the same footing. All the accused of a case always do not stand on the same footing. While considering bail of different accused the court has to find out whether they stand on the same footing or not. Even if role assigned to various accused is same yet they may stand on different footing. Nonetheless the principle of grant of bail on parity cannot be allowed to be carried to an absurd or illogical conclusion so as to put a judge in a tight and straight jacket to grant bail automatically.

15. Thus, the word 'parity' connotes a state when a person is placed on the same footing as the other person. However, parity cannot be the sole ground for granting bail even at the stage of second or third or subsequent bail applications when the bail applications of the co-accused whose bail application had been earlier rejected are allowed and co-accused is released on bail. Even then the court has to satisfy itself that, on consideration of more materials placed, further developments in the investigations or otherwise and other different considerations, there are sufficient grounds for releasing the applicant

on bail. If on examination of a given case, it transpires that the case of the applicant before the court is identically similar to the accused on facts and circumstances who has been bailed out, then the desirability of consistency will require that such an accused should be also released on bail.

16. Undisputedly, the co-accused-Atish Ingole is released on bail by the Hon'ble High Court in Bail Application 287/2020 on 09/03/2020. The role played by the other accused-Atish Ingole, as alleged by the prosecution is identically similar to the accused on facts and circumstances who has been bailed out. Therefore, the accused is also entitled for bail.

17. The accused is in custody since 22/02/2020 means for more than 20 days. There cannot be any dispute that it will take much time for conclusion of investigation and commencement of trial and during that period the accused has to remain in jail. In my view it is not in the interest of justice that the accused should be in jail for an indefinite period. There is no doubt that the offences alleged to have been committed by accused and other accused are of serious nature but when there is no serious contention of the prosecution that he, if released on bail, would interfere with the investigation or trial, I am of the firm view that there is no reason rather sufficient reason to keep him behind bar.

18. I am unable to persuade myself with the argument advanced by Shri. Nayak, A.P.P. for the prosecution that the accused is not entitled to be released on bail because (i) the investigation is in progress and (ii) there is sufficient evidence on record against him. The reasons are :-

- That in view of order passed by the Hon'ble High Court the arguments can not be considered.
- That considering my discussion, supra.

19. It is well settled that the provision of bail under Section 439 of the Cr.P.C. and is meant for saving the innocent person from unnecessary detention. The said provision cannot be used for a person, who prima facie, is involved in criminal activities.

20. To sum up, though the offence with which the accused is charged is of serious nature, if the application is granted it will not hamper the investigation. **There is substantial change in circumstances and fact situation brought on record by the accused which will lead to grant this second bail application. (emphasis supplied).** He is entitled to be released on bail on the ground of parity. If that be so, the contention of the accused that he is innocent and is falsely implicated in the crime, can be accepted, prima-facie. I am of the firm view that the accused is entitled to the grant of bail pending investigation on stringent conditions in order to lessen the intensity of the apprehension expressed by I.O. in his report.

21. Considering the above-mentioned facts and circumstances of the case, I am inclined to grant bail to the accused.

22. It is made clear that the observations made in this order are made for the limited purpose of this application only and shall not have any effect on the merits of the case under investigation and all parties are at liberty to agitate their respective cases at the time of inquiry or trial in the case under investigation, on merit without being prejudiced even in the least by any of the observations made in this order.

23. Accordingly, I answer point Nos. 1 and 3 in the affirmative and point No. 3 as application granted as per final order

24. In the result, following order.

ORDER

1.	The application is granted.						
2.	The accused-Nikhil Sahebrao Patole, be released on bail in Crime Register No. 34/2020 registered at Aundha (Nagnath) police station on his furnishing a personal bond in the sum of Rs. 15,000/- (Rupees Fifteen Thousand only), with one surety in the like amount, on the following conditions :- <table><tr><td>(i)</td><td>The accused shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.</td></tr><tr><td>(ii)</td><td>The accused shall not tamper with the prosecution evidence by intimidating the witness in any manner.</td></tr><tr><td>(iii)</td><td>The accused shall not indulge in any criminal activity or commission of any crime after being released on bail.</td></tr></table>	(i)	The accused shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.	(ii)	The accused shall not tamper with the prosecution evidence by intimidating the witness in any manner.	(iii)	The accused shall not indulge in any criminal activity or commission of any crime after being released on bail.
(i)	The accused shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.						
(ii)	The accused shall not tamper with the prosecution evidence by intimidating the witness in any manner.						
(iii)	The accused shall not indulge in any criminal activity or commission of any crime after being released on bail.						
3.	The prosecution is at liberty to seek cancellation of bail in case of violation of any of the conditions imposed.						
4.	The concerned police station be informed, accordingly.						
5.	The police papers be returned.						

(Pronounced in Open Court).

Date : 11/03/2020.

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