

**ORDER BELOW EXH.68 IN**  
**SESSION CASE NO.74/2021**

(State of Maharashtra Vs. Bhimrao @ Appa Ganpat Bhojane &  
Ors.)

(CNR NO.: MHAk-05-000526-2021)

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This is second application for bail by accused Rajesh @ Raju Ganpat Bhojane under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023. Applicant is arrayed as one of the accused person in Crime No.254/2021 [now Session Case No. 74/2021] registered with Telhara Police Station for offences punishable under Sections 302, 307 read with 34 of the Indian Penal Code, 1860.

**Prosecution case is as under :**

2. The present applicant and other accused persons in furtherance of their common intention assaulted Devidas Ukarda Bhojane by means of axe, iron rod, crowbar. The assault resulted in death of Devidas Bhojane. As per report lodged by Pramila, investigation did swing into motion. Prosecution imputed that, there was long standing rivalry between the family of the deceased and family of assailants/accused persons. The motive projected by the prosecution to terminate the life of the deceased is that son of the accused persons had abducted daughter-in-law of the informant. Owing thereto, the incident in question had take place and it resulted in the offence of murder.

3. According to the applicant, he is falsely implicated in this case. He has no concern with the alleged incident. Imputed offences are not attracted. Investigation has been

completed. Applicant is behind bars since 29.05.2021. Considering this law standing pre-trial incarceration, he needs to be released on bail. It is further submitted by the applicant/accused that, offence punishable under section 302 of IPC is not attracted. Earlier bail application of the applicant though rejected by the then forum, the same is not bar as present application is sustainable owing to changed circumstances. The applicant is suffering from the ailments like lung biopsy. Role of the applicant is not made clear during the assault. Applicant is the only earning member of the family. Owing to pre-trial incarceration, family of the applicant is undergoing starvation. There was 36 witnesses arrayed by the prosecution. It would require substantial time for completion of trial. There is no cogent evidence against the applicant. As such, the applicant prays for bail on changed circumstances.

4. In the course of argument, Ld. advocate for the applicant submitted that, though the incident take place allegedly on 29.05.2021 at 6-00 am, statements of witnesses viz. Ramesh Khanderao and Jagdeo Bhojane were recorded on 03.06.2021. There is inconsistency regarding the time of the alleged incident in the statements of these witnesses. Rather all the eye witnesses who are projected by the prosecution do have different versions regarding the alleged incident. The applicant is inculpated in the incident merely because he was relative of the other accused persons. The applicant is residing at different place than the place of residence of the deceased. Applicant is ready to abide by the all the conditions as may be imposed by this Court in respect of bail. Though the weapons are alleged to have been recovered from the applicant, there is no supporting

circumstance of chemical analysis in respect of the weapon. To that tune, the applicant has prayed for bail under section 483 of BNSS.

5. The State prosecution resisted the application by submitting that, there are overt acts attributed against the applicant in FIR. There is consistent account of the incident given by many eye witnesses like Vijay, Pravin etc. Report of *post-mortem* examination does support FIR imputations. There is recovery of incriminating weapon from the applicant under section 27 of Evidence Act. There is no change in the circumstances. Offence is serious in nature and is punishable with capital punishment. The witnesses are present in the Court which may be examined. In that circumstances, the claim of bail is opposed by the prosecution.

6. Heard Learned advocate for the applicant and Learned APP for the State Prosecution. Perused the available material.

7. Points for determination and findings thereon are as follows.

<b>Sr.No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1.	Does the applicant prove that, he has made out ground for bail u/S. 483 of BNSS?	No.
2.	Whether the applicant is entitled to bail as prayed for?	No.
3.	What order?	The application is rejected.

**REASONS****AS TO POINT NOS.1 AND 2:**

8. While appreciating merits of the application, it needs to be noted at the outset that, earlier bail application being application at Exh. 46 by the present applicant, which was moved after filing the charge-sheet, has been rejected by this Court. The Ld. Predecessor while rejecting the said application has given elaborate reasons. In this premise, it is expected on the part of applicant to project the change in circumstance to claim bail. The sole circumstance as is projected by the applicant is that, there is no supporting chemical analysis reports. Further, it may be noted that, those chemical analysis reports being inconsistent with prosecution case can not be viewed as change in circumstance. Yet the evidence is to be commenced with. Upon completing the entire trial, the respective liabilities would be adjudicated. Mere filing of chemical analysis report which may be adverse to prosecution imputations, by itself can not be viewed as change in circumstance, much less to warrant the applicant to get release on bail. It is tried to project that, there is delay in recording statements of eye witnesses like Ramesh Khanderao and Jagdeo Bhojane. However, the fate of this circumstance needs to be addressed after conducting the entire trial and at the time of final adjudication. The same does not vitiate the prosecution much less when earlier bail application was rejected by this Court [Exh. No. 46].

9. Regarding the alleged contradiction about the time of occurrence of incident allegedly at the behest of witness

Ramesh and Jagdeo, the said circumstance also can not be expected as vitiating factor to the credibility of those witnesses as the same would require trial for its adjudication. Rest of the circumstance and grounds to claim bail are already decided on merits by the Ld. Predecessor of this Court *vide* order dated 25.04.2023 below Exh. 46. This Court as such is not inclined to release the applicant on bail at this stage. Accordingly, as the application is devoid of merits, needs to be rejected. Before parting, it is kept on record that, two witnesses are present in the Court. Prosecution may examine them today and record their evidence before this Court. The trial, considering it's age, is expedited. Resultantly, the application needs to be rejected. Therefore, point Nos.1 and 2 are answered in the negative. Hence, the order :

**ORDER**

1. The application is rejected.
2. The trial is expedited.

Place :Akot.  
Date : 05/11/2024.

**(B. M. Patil)**  
Additional Sessions Judge,  
Akot.