

MHAU160003312025



Sessions Case No.82 of 2025

The State of Maharashtra

Vs.

- 1] Anita @ Parigabai Prabhakar Tribhuvan**
- 2] Dilip Prabhakar Tribhuvan**

ORDER BELOW EXH.13

Applicant Nos.1] **Anita @ Parigabai Prabhakar Tribhuvan** and 2] **Dilip Prabhakar Tribhuvan - Mohammad Aasif Nihal Ahmad** have filed this **Second** application under section **483** of the Bharatiya Nagarik Surakasha Sanhita.

Prosecution case in short is as under. :-

[2] Deceased – Prabhkar was the husband of accused No.1- Anita and father of accused No.2- Dilip. It is alleged that on 09.05.2024 at about 11:00 p.m. to 12:00 of midnight both the accused persons assaulted the deceased with “Paat” (wooden plank to be used for seating purpose) and stone “varvanta” on his head and killed him and thereafter caused to disappear evidence as regards to this crime. Hence, crime vide C.R.No.09/2024 came to be registered. Investigation was conducted and charge-sheet was filed. First bail application (Exh.5) filed by the accused persons was rejected by my learned predecessor on 15.10.2024.

[3] Now, the accused persons have filed this Second application for grant of bail on the main ground of non commencement of trial.

[4] I have heard both the sides and perused the material placed on the record.

[5] Learned Advocate for the accused persons submitted that first bail application of the accused persons was rejected on 15.10.2024, thereafter, till the date almost one year's time has been lapsed and the matter was adjourned from time to time for 26 times. However, in this date there is no progress in the trial. Jail Authority did not bother to produce the accused persons before this Court even for framing of charge. Thus, right of speedy trial of the accused persons guaranteed under Article 21 of the Constitution of India has been violated. Therefore, the accused persons may be granted bail.

[6] In support of this application the accused persons have relied upon the following case laws which are mentioned in the application itself:-

(i) **Sanjay Chandra v. CBI (2012) 1 SCC 40**: The Supreme Court emphasized that delay in trial is a valid ground for granting bail, stating, "Bail is the rule and jail is the exception." The court held that if an accused has been in custody for a long period and the trial is not likely to conclude anytime soon, bail should be considered.

(ii) **Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar (1980) 1 SCC 81**: The Supreme Court was critical of the long delays in trial and held that a speedy trial is an essential part of the fundamental right to life and liberty. This ruling led to the release of thousands of undertrials who were in custody for prolonged periods.

(iii) **Common Cause v. Union of India (1996) 4 SCC 33**: The Supreme Court issued detailed guidelines for the release of under-trial prisoners who had been incarcerated for extended periods without trial.

(iv) **Supreme Court Legal Aid Committee v. Union of India (1994) 6 SCC 60**: The court established that if a person has been in custody for a significant duration, their continued detention infringes upon their right to a speedy trial, and they should be released on bail.

[7] Learned Advocate for the accused persons further submitted that accused No.1 is old age lady, whereas accused No.2 is main “Karta” i.e. earning member of his family. Four to five members of his family are dependent upon him. Since more than 1 and ½ year the accused are in jail. They are ready to abide all the terms and conditions which will be imposed by the Court. On these grounds he prayed for grant of bail.

[8] On the other hand, learned APP submitted that there is ample material on the record to show that the accused have committed an offence as alleged by the prosecution. In the circumstances, filing of the charge-sheet cannot be the sole ground for grant of bail. Similarly, considering the above mentioned facts and circumstances of the case, the accused is not entitled for bail under Article 21 of the Constitution of India, only because trial has not been commenced. In the circumstances, if the accused are granted bail, possibility of their absconding and tampering with prosecution evidence, cannot be ruled out. On these grounds, they prayed for rejection of the application.

[9] It is important to note that this being the successive bail application filed by the accused persons, it is necessary to see as to whether there is / are change/s in circumstances for considering this **second** bail application. So far as, non-commencement of trial and liberty guaranteed under Article 21 of the Constitution of India, is concerned, on going through the above-mentioned case laws relied upon by the accused, it appears that their Lordships have mainly observed that prolong custody affects fundamental rights under Article 21 of the Constitution of India. Incarceration in custody for long period without trial or completion of trial affects personal liberty guaranteed under Article 21 of the Constitution of India. However, in the above case laws, it is not observed or stated that each and every case the accused is entitled for bail straight-

way under Article 21 for non-commencement of trial. Considering the above-mentioned case laws, it appears that while granting bail facts and circumstances of each and every case should be weighed on its own merits and balance has to be maintained between Judgment of acquittal and conviction and order granting bail much before commencement of trial.

[10] It is also well settled that while dealing with application for bail, Court has to consider nature of the offence and its severity, nature of the evidence in support of the accusation and also outcry of the victim of the crime.

[11] Thus, on perusal of the material placed on the record, it appears that the accused actively participated in the crime with common object. At the time of the incident both the accused persons assaulted the deceased with wooden plank and stone "Varvanta" on his head and caused him grievous injuries. The said injuries were sufficient to cause death of the deceased. Postmortem report also shows that the deceased died due to head injury. There is evidence of the eye-witnesses who saw the accused persons eventually assaulted the deceased.

[12] No doubt, investigation of the crime is completed and the charge-sheet is filed. However, material placed on the record is sufficient and cogent that the accused have committed the offence as alleged by the prosecution. In the circumstances, non-commencement of trial during last one year, may not be the ground for grant of bail.

[13] Having regard to the above mentioned facts and circumstances, I am of the opinion that if the accused are granted bail, possibility of their absconding and tampering with the prosecution evidence, cannot be ruled out. Hence, the accused are not entitled for grant of bail. In the result, the application deserves to be rejected. I, therefore, pass the following order. :-

ORDER

Application (Exh.13) is hereby rejected.

Date : 14.10.2025

(S.B. Bahalkar)
Additional Sessions Judge,
Gangapur