

MHKO010047492023



**ORDER PASSED BELOW EXH. 75 IN
SESSIONS CASE NO.276/2023**

The accused No.1 is seeking bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS” for short) on the grounds that, his wife has instituted divorce petition in the Family Court at Kolhapur against him and he has received summons asking him to appear before the said Court on 19/01/2025. He was earlier released on temporary bail on account of illness of his mother and on both the occasions after attending his mother’s medical needs he voluntarily surrendered before the Prison Authority. He has never misused the liberty granted to him. His wife has left the matrimonial home permanently and there is nobody to look after his aged and ailing mother, who is suffering from hypertension, chest pain and exertion dyspnea. His mother needs regular medical attention and care.

2. He has further contended that, the accused No.2, who is alleged to have hatched entire conspiracy, has already been released on bail on 18/01/2025 and hence he is also entitled to bail on the ground of parity. Besides, the role of the accused No.2 is graver than his role. He has also contended that, the FIR shows that, the robbery was

committed by four unknown persons and there is no whisper regarding his presence or participation in the alleged offence. Besides, nothing has been recovered or discovered at his instance during the course of investigation and the CCTV footage relied upon by the prosecution also does not disclose presence of the applicant. He has further contended that, due to absence of material to show his presence at the scene of offence Sections 395 and 397 of the Indian Penal Code, 1860 are not prima facie attracted. Further more, no specific role is attributed to him in the charge-sheet. The investigation is already completed. Two suspects are shown as absconding and there is no likelihood of early conclusion of the trial. The applicant is in Jail since last two and half years without any progress in the trial. He is having deep roots in the society and there is no likelihood that he would abscond. He has undertaken to abide by any conditions that may be imposed.

3. The application is resisted by the State by filing say (Exh.77) on the grounds that, the offence is grave and it involves armed dacoity with fire arms resulting in grievous injury and theft of gold ornaments and cash worth Rs.2.6 Crores, out of which substantial portion is yet to be recovered. It is also contended that, there is material showing the involvement of the applicant-accused. Besides, two crimes are registered against him and there is possibility that the applicant-accused No.1 may pressurize the witnesses or

tamper with the evidence, if released on bail. It is further contended that, the roles of the accused No.1 and 2 are different and therefore, parity is not available to applicant-accused.

4. I have heard Ld. Advocate Mr. G.K. Naik for the applicant-accused and Ld. APP Mr. S.S. Pardeshi for the state.

5. The Ld. Advocate for the accused vehemently submitted that, the FIR is against four unknown persons, there is no substantive material to connect the applicant-accused with the crime in question and it is clear that the applicant-accused was not present at the scene of offence. He also submitted that, the applicant-accused came to be arrested on mere suspicion. He further submitted that, the accused No.2, who is having graver role, has been already released on bail and the applicant-accused is in Jail since long period. He also submitted that, the wife of the applicant-accused has instituted divorce proceeding and it is necessary for him to defend the same. So also, the mother of the applicant-accused requires constant attention and medical care and there is nobody to look after her. He also submitted that, because of the incarceration of the accused No.1, he is not able to repay the installments of the loan of the concerned Pat Sanstha and there is likelihood that, his property would be attached. For that purpose, he invited my

attention to the copy of the loan account statement as well as order passed by the Ld. Chief Judicial Magistrate in Criminal M.A. No.40/2024. He also relied upon ruling in *Babu Sin mjjgh and Ors. Vs. State of U.P, (1978) AIR (SC) 527* in support of his submissions.

6. Per contra, the Ld. APP submitted that, the offence is grave, there is material showing involvement of the applicant-accused No.1, the earlier bail application of the said accused has been rejected by the Hon'ble High Court after filing of the charge-sheet and there is no change in circumstances.

7. I have given thoughtful consideration to the submissions made on behalf of the parties. A copy of the bail order dated 26/08/2024 is placed on record by the Ld. APP and it becomes clear that, the application for bail of the applicant-accused No.1 has been rejected by the Hon'ble High Court. The Hon'ble High Court has specifically observed that, the Ld. APP pointed that there are 3 antecedents of similar nature and melted gold worth Rs.22,00,000/- was recovered from the applicant and also electric weaving machine recovered from him. It is also observed that, there is a CDR, which supports the case of the prosecution that all the accused persons were in contact with each other. In addition to this, CCTV footage which shows the presence of the

applicant at the spot with the accused is also recovered. Said order has been passed after filing of the charge-sheet and therefore, now this Court cannot go into the merits of the case for the purpose of deciding this bail application. As far the ruling in *Babu Singh and Ors. Vs. State of U.P.* (Supra) is concerned in that case, it is held that, an order refusing application for bail does not necessarily preclude another on a later occasion giving more materials, further developments and different considerations. It is also held that, bail is not meant to be a punishment and judicial discretion in the context of bail must be guided by law and established principles.

8. The Ld. Advocate for the accused No.1 submitted during the course of arguments that, the earlier advocate had not presented the case before the Hon'ble High Court properly and melted gold was not recovered at the instance of the accused No.1. So also, his presence is not recorded in the CCTV footage. However, since the earlier bail application has been rejected on merits by the Hon'ble High Court after filing of the charge-sheet, this Court cannot go into those aspects again.

9. As far change in circumstance is concerned, filing of divorce petition by wife of the accused cannot be said to be change in circumstance. As far passing of the order under the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is concerned, the said order is dated 26/04/2024 i.e. prior to passing of order by the Hon'ble High Court. Therefore, I do not find any of the circumstances mentioned in the application of such nature, entitling the applicant-accused No.1 to bail. The offence is grave and it involves dacoity with attempt to cause death/grievous hurt, involving property worth Crores. In these circumstances, I do not deem it fit to grant bail and the application is required to be rejected. Hence, the following order is passed.

ORDER

1) Application is rejected.

Date : 02/04/2026.

(R.V. Utpat)
Additional Sessions Judge,
Kolhapur.

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer	Mr. R. R. Patil
Name of Court	Mr. R. V. Utpat, Addl. Sessions Judge, Kolhapur.
Date of Dictation	02/04/2026.
Order signed by the P.O. on	05/04/2026.
Order uploaded on	05/04/2026.