



SC Case No.149/2023
State Vs. Pooja & Ors.
CNR No.MHLA010043382023

Order Below Exh. 110

01. Applicant accused No.2 has filed this application for grant of bail in connection with the CR.No. 108 /2023 registered with Gategaon police station for the offence punishable under Section 302, 120 B, 341, 504 read with section 34 of Indian Penal Code.

02. Heard learned Advocate Shri Shinde for applicant and learned DGP Shri. Deshpande for State. Perused the application, charge sheet, say filed by prosecution and I.O.

03. Learned advocate for applicant submits that Hanumant (deceased) was real brother of present applicant Nirmala, whereas accused No.2 Pooja is her daughter, who married with Hanumant, role assigned to applicant Nirmala is very little that she introduced accused No.3 Rajendra Nitale to Pooja, pursuantly Pooja gave contract to say Rajendra to commit murder of her husband Hanumant Katare. He further submits that till today prosecution examined 11 witnesses, but no iota of evidence has come on record against applicant, who is implicated on the basis of confessional statement of co-accused, Hon'ble High Court granted bail to co-accused No.4, trial will take its own time to conclude and hence applicant may be released on bail.

04. Learned DGP submits that applicant was in contact with accused No.3, who is contract killer, applicant made partial payment to accused No.3 by selling ornaments, though role of applicant is of conspirator, but offence is of serious nature, and hence parity would not be applicable here, prosecution has examined material witnesses, trial will be concluded within short period, earlier bail application came to be rejected by the Hon'ble High court, there is no change in the circumstances to file present application and hence same may be rejected.

05. In the case of **Gama and others Vs. State of UP reported in 1987 Cri. L.J., 242**, Hon'ble Court has observed that the right of bail is statutory right rather it is a constitutional right. Even though it may be second or third bail application, but unless it is apparent from a reading of the first bail order that the point urged in the subsequent bail application was also considered and rejected, it cannot be said that the point urged in second bail application would be deemed to have been considered in the first bail application just by implication.

06. On perusal of record, it appears that bail application No. 240/2024 of applicant came to be rejected by the Hon'ble High Court of 06/09/2024 and at that time no witness came to be examined by the prosecution. Now record indicates that, 11 witnesses came to be examined. In view of observations made in the case of **Gama** (cited supra), this Second bail application is tenable.

07. Before appreciating role of the applicant and facts of the present case, it is useful to see some judgment on the point of bail. In the case of **Gurbaksh Singh Sibba v. State of Punjab, (1980) 2 SCC 565**, Hon'ble Supreme Court held that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment.

08. In the recent decision, **Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51**, Hon'ble Apex Court discussed effect of prolonged incarceration and inordinate delay in trial and considered the correct approach towards bail, with respect to several enactments.

09. In the case of **Javed Gulam Nabi Shaikh Vs. State of Maharashtra, Criminal Appeal No. 2787 of 2024**, Hon'ble Supreme Court granted bail to the accused emphasizing the right to speedy trial and observed that bail should not be withheld as a punishment. Hon'ble Court further observed that,

“We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.”

10. In view of above legal position, now let us see as to what is the role of applicant in present crime. On perusal of record, it appears that role assigned to applicant Nirmala is that she introduced accused No.3 Rajendra Nitale to Pooja and she made partial payment to accused No.3, who is contract killer. On perusal of evidence of the witnesses, it appears that Nirmala was not present on the spot of incident and practically nothing has come on record against her from the mouth of said witnesses.

11. It appears that the applicant is implicated on the basis of confessional statement made by co accused, which is having no importance to prove the involvement of this applicant. It is pertinent to note that, while deciding bail application No. 240/2024 of present applicant, Hon'ble High court also observed that confessional statement of co-accused is having no value. It appears that role assigned to accused No.4 is that he was present with accused No.3 and he participated in assault to Hanumant(deceased) along with accused No.3 and Hon'ble High Court granted bail to him.

12. It appears that applicant is old aged lady of 70 years, there is no criminal antecedents against her, she is permanent resident of Murud Dist. Latur, she has been in jail sine 21/07/2023 i.e. for more than 2 years, material witnesses have already been examined, so there is no possibility of tampering witnesses, trial court will take its own time to conclude, personal liberty of each day

is important. There is nothing on record to suggest that applicant will be free from justice, if bail is granted. considering all the facts and circumstances , particularly considering the old age of applicant and her role in the present case, case is made out for grant of bail. Therefore, I proceed to pass the following order.

ORDER

1. The application is allowed .
2. Applicant / accused No.2 **Nirmala w/o Pandurang Dayal** R/o. Thombre Nagar, Murud, Dist. Latur be released on bail, in crime No. 108/2023 registered with Gategaon police station, Latur for the offence punishable under Section 302,120-B,341, 504 read with section 34 of IPC on furnishing surety of Rs. 25000/- and executing P.R. bond of like amount.
3. She shall not directly or indirectly entice, induce, threaten the prosecution witnesses in any manner .
4. She shall attend the trial regularly.

Date: 19/11/2025.

(S.J. Bharuka)
Sessions Judge, Latur