



ORDER BELOW EXH.01
(PASSED ON 02/07/2026)
MHPU07-000002-1975

Perused record. Case is old and pending for 51 years for securing presence of accused **Jaysingh Kisan Babar**. Despite of issuance of non-bailable warrant and proclamation time to time, his presence could not be secured by the prosecution during entire period. It appears that, presence of accused cannot be secured in near future.

2. As per contentions of Prosecution, incident has occurred on 14/11/1974 about 12.30 hours at Public Cycle Company Shop near Sassoon Road, Pune. At that time, accused took cycle on rent from the Complainant for 1 hour and without consent of complainant dishonestly sold it to other person thereby committed offence of criminal breach of trust. Thereafter, complainant lodged report against the accused at Band Garden Police Station, Pune. Accordingly, Crime bearing No. 948/1975 for the offence punishable under **Section 406** of Indian Penal Code came to be registered. Record shows that, accused has absconded since filing of charge-sheet. Hence, case is pending for his appearance for framing of charge.

3. Ld. Predecessor of this Court issued proclamation against accused on 13/02/2020 in view of Sec. 82 & Sec. 83 of Code of Criminal Procedure. However, presence of accused could not be secured during this entire period. As the Prosecution could not secure presence of accused within time, case proceeded under **Sec. 299** of Cr.P.C. in view of order passed below Exh. 1 on 17/01/2026. Accordingly, witness summons were issued against all witnesses who are acquainted with the facts of the case.

Band Garden Police Station have filed summons report below **Exh. No. 2** stating that, they are not able to find the location of witnesses due to their insufficient addresses and possibility of shifting from earlier residential addresses. Even though, time was granted for securing their attendance, but no progress till date. Witness Shankarrao Dhole has died and his death certificate is filed on record. Hence, in view of these reasons, evidence of prosecution is closed on 15/05/2026.

4. Heard learned APP. Smt. A. S. Kale. She submitted that, accused is proclaimed offender and witnesses are not produced by concern Police Station hence, prayed to pass necessary order. At present, accused has absconded and there is no immediate prospect of arresting him in near future. Whenever the accused would be arrested, evidence of witnesses recorded as per the provisions of **Section 299(1)** of the Criminal Procedure Code would be used as an evidence against accused in the trial. In short, the situation which would arise after the arrest of accused in future would be the same at present pertaining to the factual aspects of the case.

5. Considering this background, I have to consider evidentiary value recorded under **Section 299** of the Criminal Procedure Code keeping in mind provisions of **Section 33** of the Evidence Act which contemplates admissibility of evidence recorded under **Sec. 299** of Cr.P.C. However, in the present case prosecution could not secure presence of any witness till date. Therefore, no evidence has come on record against the present accused. If the evidence is not sufficient to warrant the conviction, then there is no propriety to keep this proceeding pending for indefinite period. Hence, to save the time of Court, Police machinery and prosecution it is desirable to pass appropriate order considering the provisions of **Section 299** of the

Criminal Procedure Code. Undoubtedly, the status of present proceeding is stale and ineffective. Prosecution could not bring oral as well as documentary evidence on record. Hence, accused is liable to be discharged from the offence. Thus, I pass following order -

ORDER

1.	Accused namely Jaysingh Kisan Babar is discharged from the offence punishable under Section 406 of Indian penal Code vide Section 239 of Code of Criminal Procedure.
2.	Bail bonds if any, of the accused are canceled.
3.	Non- bailable warrants issued against accused are canceled.
4.	Seized Cycle amounting Rs. 315/- be handed over to the original owner as per rules after appeal period is over. If the said person is not found despite efforts then it be sold through public auction and sale proceed be deposited in the Government account as per rules.
5.	Police Inspector of Band Garden Police Station, Pune to file its compliance on record.

(Pronounced in open court.)

Date : 02/07/2026
Place : Pune.

(N. J. Chavan)
Judicial Magistrate, F. C.,
Railway Court, Pune.