

Order Below Exh.30

The accused no.1 Bharat Bhoru Dhonge has filed this third bail application for grant of bail in respect of Crime No. 238/2021 registered with Khed Police Station for the offences under Sections 302, 201, 120(B), 363, 364 of Indian Penal Code.

2] It is contention of accused no. 1 that he is in custody for period of more than three years. There is no progress in the trial. Long incarceration in custody affects the fundamental right of the accused under Article 21 of the Constitution of India. There is no likelihood of trial getting over within short span of time. The role of accused is only under Section 201 of Indian Penal Code. Therefore, it is mandatory to grant bail to accused as one-half of the maximum period of imprisonment completed. There is no positive identification of the dead body and DNA report is awaited. The statement of witness Kiran Bhokte was recorded after the arrest of accused. He has not disclosed the fact anybody for 25 days. The accused has not protracted the trial. There is no any motive attributed to the accused. There is no eye witness of the incidence. No any incriminating circumstances is there against the accused.

3] The prosecution opposed this application on grounds that the accused no. 1 is the main accused. The accused no. 1 made phone call to accused no.4 and asked her to bring the deceased at her room. The accused no. 4 is wife of accused no. 1 and there were illicit relations between the accused no.4 and deceased. The dead body was set on fire by pouring petrol. The accused is involved in

alleged crime. There is possibility of tampering witnesses and absconding of accused.

4] Heard both the sides. Perused the record. It is submitted on behalf of accused that the accused is in custody for more than three years. There is no progress in trial. The statement of witness came to be recorded belatedly. On behalf of accused reliance is placed on following judgments -

- 1] **Soni Umesh Jegre Vs. State of Maharashtra [Criminal Bail Application No. 3210 of 2024 decided on 04/12/2024].**
- 2] **Jahid alias Javed Liyakat Ansari Vs. State of Maharashtra [Criminal Bail Application No. 2244 of 2023 decided on 18/12/2023].**
- 3] **Bhola Pralhad Shelke Vs. State of Maharashtra [Bail Application No. 1065 of 2022 decided on 13/09/2024].**
- 4] **Lahanya Gonu Jadhav Vs. State of Maharashtra [Criminal Bail Application No. 522 of 2021 decided on 05/04/2021].**
- 5] **Gaurav Bandu Patil Vs. State of Maharashtra [Bail Application No. 603 of 2024 decided on 19/04/2024].**
- 6] **Ishak Shah Vs. State of Maharashtra [Criminal Bail Application No. 404 of 2024 decided on 22/11/2024].**
- 7] **Kailash Chand Vs. [S.B. Criminal Miscellaneous IInd Bail Application No. 12140 of 2023].**
- 8] **Pradeep Shivaji Shinare Vs. State of Maharashtra [2013 ALL MR (Cri) 1317].**

5] On behalf of prosecution, it is submitted that there is motive on the part of accused no. 1. There are statements of

witnesses. The accused has filed two bail applications earlier. The DNA report is on record. Earlier bail applications are decided on merit. The grounds made in the applications are not tenable. More than of period of incarceration undergone by accused and unlikelihood of trial concluded in near future cannot be ground for releasing accused on bail particularly in offences punishable with life imprisonment or even death penalty. The prosecution relied on judgment of the Hon'ble Supreme Court in **Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav [LEX (SC) 2004 3 30]**.

6] On perusal of record, it appears that the accused no. 1 has filed first bail application at Exh. 25. The said bail application came to be rejected as per order dated 21/09/2022. In para no. 8 and 9 of the order, my predecessor observed that the dead body of the deceased was recovered on 27/04/2021 at the instance of this accused. The statement of informant prima facie transpires about an identification of the clothes of the person of the deceased. In such circumstances, at this stage, it can be said that the dead body which is recovered at the instance of the applicant was of the deceased. It is observed in respect of statement of witness Kiran that the informant did not disclose the name of Kiran from whom she came to know that on the particular day he saw the applicant and deceased together. It appears some variance but this fact itself is not sufficient to prima facie disbelieve the prosecution story, to the extent of the applicant which is supported with his memorandum, who soon after arrested narrated before the police that, he is ready to show the place where the dead body of the deceased was buried and accordingly, in presence of Nayab Tahasildar the dead body was

recovered from the spot of presence of panchas. In para no. 10 of the order, it is observed that so far motive on the part of the applicant is concerned, record prima facie revealed an illicit relation of his wife and deceased Mahesh.

7] The accused no. 1 subsequently filed second application at Exh. 27. After filing of the application by the accused, prosecution filed reply on 05/09/2024. However, advocate for the accused was absent. Therefore, case was adjourned for time to time for argument on Exh. 27 however, till 08/10/2024, no argument was advanced. Therefore, after considering the record, the application at Exh. 27 was rejected on 08/10/2024.

8] After rejection of application at Exh. 27 on 08/10/2024, the accused no. 1 has filed this third bail application on 07/12/2024. On 16/12/2024, specific order was passed that today the prosecution filed reply. However, advocate for the accused no. 1 prayed for grant of time. The application at Exh. 30 is fixed for argument on next date. After that the advocate for the accused no. 1 submitted argument and learned A.P.P. submitted argument.

9] After considering these facts, it can be said that due to the filing of successive bail applications by the accused no.1 further trial did not proceed. The record shows that the report of DNA analysis is filed by the prosecution on 16/12/2024.

10] The judgments relied on behalf of accused are not helpful to him, because the facts and circumstances of the case in

each judgment are different than the facts and circumstances of the present case. Moreover, in present case it cannot be said that the role of accused no. 1 is to the extent of offence under Section 201 of the Indian Penal Code only. There is a prima facie case against the accused no. 1 for the offence under Section 302 of the Indian Penal Code. In case of **Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav** (cited supra), the Hon'ble Supreme Court held that bail grounds for period of incarceration undergone by accused and unlikelihood of trial concluded in near future cannot be ground for releasing accused on bail particularly in offences punishable with life imprisonment or even death penalty. In present application except the ground of period of incarceration is the only new ground. The all other grounds were considered while deciding the bail application at Exh. 25. In such circumstances, it can be said that this third application is liable to be rejected. Hence, I pass following order -

ORDER

- 1) Application at Exh. 30 is rejected.
- 2) The copy of order and copy of reply filed by the prosecution be given to the accused free of costs.
- 3) The accused has right to challenge this order by filing appropriate proceeding before the Hon'ble Bombay High Court, Mumbai and free legal aid is available if he is entitled for the same.
- 4) The cover sheet setting out the contact address and phone

number of the Legal Aid Services Authority be annexed to the order.

- 5) Inform to the concern Police Station.

Khed.
Date: 23.12.2024

(S. P. Pol)
Addl. Sessions Judge,
Khed-Rajgurunagar,
Dist. Pune.

**Cover Sheet as per the direction of Hon'ble Supreme Court of India
Writ Petition No. 1082 of 2020 Suhas Vs. Union of India.**

It is informed to the accused that free legal aid facility for pursuing higher remedy before the Hon'ble Bombay High Court at Mumbai to challenge the order passed in the present case. The contact address and phone number of the Legal Aid Services Authority is as under -

Address :

District Legal Services Authority, Pune
District Court Premises, New Building First Floor,
Shivajinagar, Pune - 411005.

Contact :

Phone No. 020-025534881, Mob. 8591903612
Email- pune-dlsa.mh@bhc.gov.in/dlsapune2@gmail.com
NALSA Helpline Number 15100
Apply Online - <http://www.nalsa.gov.in/lams>

Pune.

Date: 23.12.2024

(S. P. Pol)
Addl. Sessions Judge,
Khed-Rajgurunagar,
Dist. Pune.

CERTIFICATE

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

Name of steno	:	Smt. P. P. Deo (Stenographer Grade-I)
Court Name	:	Shri. S.P. Pol, Addl. Sessions Judge, Khed-Rajgurunagar, Dist. Pune.
Date of order	:	23/12/2024.
order signed by	:	
Presiding Officer on	:	23/12/2024.
order uploaded on	:	23/12/2024.