

MHRG010001152023



ORDER BELOW EXHIBIT NO. 34 IN SESSION CASE NO.4/2023

(Dated 23.07.2025)

State

Vs

Rojesh Nagu Mhatre

Perused this **first regular bail application Exh.34** under section 439 of Cr. P. C. ; pending trial – as well as say filed by IO and Ld.APP vide Exh.35.

2] Heard Mr. P. S. Patil the Ld.Defence Counsel for accused No.1 and Mr. Haraje the Ld. APP for State as per application and say respectively and also notes of their oral arguments jotted by me in the open Court in my writing vide Exh.63.

3] Also perused the authorities relied upon by Mr. P. S. Patil the Ld.Defence Counsel for accused No.1 Rojesh Nagu Mhatre vide Exh.46; 60 and 62.

1. *State of Maharashtra Vs. Rajesh and another [2016 (2) Crimes 592 (Bom) dtd 05.02.2016].*
2. *Naresh Samadhan Bhange Vs. State of Maharashtra 2018 Legal Eagle (BOM) 1464 dtd 29.11.2018.*
3. *Chintan Vidyasagar Upadhyay Vs. State of Maharashtra 2023 Legal Eagle (Bom) 461*
4. *Indrani Pratim Mukerjea Vs Central Bureau of Investigation & another 2022 ALL MR (Cri) 2282 (S.C.) dtd 18.05.2022.*

5. *Sonu Parmeshwar Jha Vs. State of Maharashtra [Bail Application 4122 of 2021 Bombay High Court dtd. 18.01.2023.]*
6. *Aakash Satish Chandaliya Vs. The State of Maharashtra ; 2023 Legal Eagle (BOM) 461 dtd. 26.09.2023.*

4] Also perused the entire record of the case and it is matter of fact that ;

- The present accused No.1 Rojesh Nagu Mhatre and another Govardhan Sitaram Waghmare are facing trial for the charges of offences p/u/sec. 302 ; 201 ; 397 all r.w.34 of IPC.
- The present accused No.1 Rojesh Nagu Mhatre was arrested on 23.04.2022 ; and charge-sheeted on 21.01.2023 and charge was framed vide Exh.5 on 29.02.2024 and prosecution opened the trial on 20.06.2024.
- Though charge-sheet cites in all 29 witnesses, the case entirely hinges on circumstantial evidence – especially theory of last seen together and, hence, the witnesses viz. the kith and kins of the deceased Pandurang Lahu Bhadakale viz. witness cited at Sr. No. 8 to 13 and 16 to 19 are post incident witnesses and can be examined and completed within short duration. Witnesses at Sr. No. 23 to 29 are police witnesses and, hence, call for being examined at last.
- Amidst this the prosecution has examined the material witnesses – complainant, spot panch, memorandum panch, seizure panch in respect of the accused No. 1 Rojesh Nagu Mhatre and accused No.2 Gowardhan Sitaram Mhatre who are PW 1 to PW 7.
- Also 02 CCTV footages from the CCTV camera of Sagar Desi Bar – one inside the bar and other leaving it – both collectively Article ‘F’ and 01 CCTV footage from the CCTV camera of Mahavir Medical – at Article ‘G’ produced on record with hash value certificates thereof – copies provided to both the Ld. Defence Counsels of both the accused and

viewed by all in the open Court hall display screen for providing copies as per law etc.

5] Further the statement of witnesses recorded especially by the JMFC Court, Pen viz. Avinash Shankar Shinde auto driver who has seen the deceased and both the accused on the Activa motorcycle of the deceased establishes prima facie theory of last seen together and so does the statement of Ashok Ramesh Waghmare depicts that, he had also been with accused No.1 and 2 at Sagar Desi Bar and at 07.30 p.m. the victim was under influence of liquor unable to maintain balance and drive and, hence, this Ashok Ramesh Waghmare had asked both the accused to leave the deceased Pandurang Bhadakale to his home and accordingly accused No.1 Rojesh Mhatre drive the Activa scooter of the deceased, carried the deceased next seated to him and accused No.2 next to deceased – triple seat on the Activa scooter of the deceased towards Borgaon side.

6] These facts are also stated by the manager of the Sagar Desi Bar – Ajit Janardan Patil as well as appearing in the CCTV footage of the bar as well as medical shop at Article 'F' and 'G' and their hash values are also ascertained alongwith all relevant certificates u/sec. 65 (B) of the then Indian Evidence Act.

7] Much so the memorandum, the spot panchanamas, memorandum panchanamas and seizure panchanamas of the

Activa, keys as well as gold chain of the deceased as well as clothes worn by both the accused have been recovered and seized at the instance of both the accused individually and respectively and panch witnesses have stick up, identified and deposed the same.

8] Also perused the postmortem report dated 22.04.2022 – PM conducted at 06.00 p.m. showing body as cold ; well marked rigor mortis all over the body and PM lividity (livor mortis) of back loins, buttocks and upper part of thighs and cutesanserina over the body semi-digested food in the stomach and small intestine ; especially NAD of thorax, walls, larynx, trachea, right lung, left lung and time of death and last meal approximately 02-03 hours and death due to cardio respiratory failure **due to diffused axonal head injury** and not ‘drowning’ which prima facie shows that, the deceased did not drown and sustained injury but was already dead and then thrown in canal water.

9] Much so the PM report shows as many as 12 antemortem injuries – open compound fractures and complete fractures to the head- scalp and skull - nasal bone, cranial cavity, frontal brain bone, floor right and left orbit, axiomatic bone – sinus right maxilla, palantine maxilla, right mandible as antemortem injuries having caused defused axonal head injury causing cardio respiratory failure, the teeth missing which all show the heinousness of the crime – modus operandi.

10] No doubt the Judge is not bound to passed a detailed reasoned order about minute appreciation of evidence but nevertheless the reasons for granting or denying bail should be mentioned.

11] Also, perusing all the above case laws relied upon by Mr. P. S. Patil – the Ld. Adv. for accused No.1 Rojesh Mhatre and more particularly the most recent judgment of our own Hon'ble Bombay High Court in the case of Santosh Pralhad Waghmare Vs. State of Maharashtra, Bail Application No. 180/2024 decided on 07/02/2025, our Hon'ble High Court has clearly considered all the Judgments relied upon by the Ld. Defence Counsel as supra viz.

1. *State of Maharashtra Vs. Rajesh and another [2016 (2) Crimes 592 (Bom) dtd 05.02.2016].*
2. *Naresh Samadhan Bhange Vs. State of Maharashtra 2018 Legal Eagle (BOM) 1464 dtd 29.11.2018.*
3. *Chintan Vidyasagar Upadhyay Vs. State of Maharashtra 2023 Legal Eagle (Bom) 461*
4. *Indrani Pratim Mukerjea Vs Central Bureau of Investigation & another 2022 ALL MR (Cri) 2282 (S.C.) dtd 18.05.2022.*
5. *Sonu Parmeshwar Jha Vs. State of Maharashtra [Bail Application 4122 of 2021 Bombay High Court dtd. 18.01.2023.]*
6. *Aakash Satish Chandaliya Vs. The State of Maharashtra ; 2023 Legal Eagle (BOM) 461 dtd. 26.09.2023.*

in its said Judgments and held that,

“ where the case is based on the circumstantial evidence and there is no probability of trial being completed in the foreseeable future, the right to speedy justice and personal liberty as enshrined in Article 21 of

*Constitution of India has to be invoked more so when bail is the rule and jail is exception and in such cases the **Constitutional Courts can exercise power to release the under-trial accused on bail** ”.*

12] Thus, the word ‘Constitutional Courts’ can exercise such power to invoke Article 21 of The Constitution of India is used thereby implying that, it is only the Hon’ble Supreme Court and Hon’ble High Courts in India which are established directly by the Constitution and derived their powers from it and can invoke Article 21 of personal liberty and right to speedy justice qua Enforcement of Fundamental Right – striking a balance, between public, social, and the interest of all concerned including the accused.

And accordingly all the above 06 authorities relied upon by the Ld. Defence Counsel Mr. P. S. Patil on the point of incarceration and there is no probability of trial being completed in the foreseeable future resulting in invoking of Article 21 of The Constitution of India are by the Hon’ble High Courts and Supreme Court and not any single were a Sessions Court has invoked such constitutional jurisdiction and such order being confirmed by the Hon’ble High Court or Hon’ble Supreme Court.

13] Much so, this Court of Additional Sessions Judge is established under the Criminal Procedure Code and by the State Government and subordinate to the Hon’ble High Courts but they are not vested with the same Constitutional Status as the Hon’ble

Supreme Court or the Hon'ble High Court and, hence, has no power and jurisdiction to invoke Constitutional Jurisdiction.

14] Hence, and for these reasons this regular bail application of accused No.1 Rojesh Nagu Mhatre for invoking Article 21 and releasing him on bail on the possibility of trial being not completed in future cannot be entertained and granted on these constitutional ground.

15] However, otherwise also as already reasoned above there is prima facie involvement of both the accused Rojesh Nagu Mhatre – No.1 and No.2 Govardhan Sitaram Waghmare in the said crime – murder of the deceased and it is gruesome and the trial has began vide charge on 29.02.2024 and first witness examined on 20.06.2024 and till date 07 prime material witnesses were examined deposing involvement of both the accused in the crime. Hence, considering gravity of offence, as well as possibility of pressurizing the witness and influencing the victim and family and possibility of accused to flee from justice, I do not find this as a fit case to exercise discretion of bail in favour of accused No.1 Rojesh Nagu Mhatre. Hence, this application cannot be allowed at this juncture. Hence, order infra.

ORDER

1. Bail Application No.86/2025 is hereby rejected at this juncture.

- 2) The prosecution is hereby directed and the Ld. Defence also to co-operate to expedite the matter within 03 months from today.
- 3) Copy of this order be sent to the Jailor, Talaja Central Prison, Navi Mumbai for information and action – to produce both the accused herein henceforth without fail either in person or by V. C. sharp at 11.00 a.m. under respective scheduled dates of the trial for expediting the same and any also to forward their production warrants respectively for extension ; breach shall be dealt with seriously and reported to the Hon'ble High Court which be noted.

Alibag

Date : 23.07.2025

(Smt. Sunita Tiwari)
Additional Sessions Judge,
Alibag-Raigad

CERTIFICATE.

I affirm that the contents of the PDF file Judgment are in verbatim as per original Judgment.

Name of Steno : Mrs. S. J. Sheth (Steno) (Gr-1)
Name of Court : District Judge-2, Raigad-Alibag.
Date of Order : 23.07.2025.
Order signed by PO on : 23.07.2025.
Order uploaded on : 24.07.2025.