

MHRG170009152019



IN THE COURT OF ADDITIONAL SESSIONS JUDGE -1 PANVEL-
RAIGAD, AT : PANVEL
ORDER BELOW EXHIBIT 101
IN SESSIONS CASE NO.79/2019 (OLD NO.136/2013)
(DATE 10/02/2023)

1. The applicant/accused **Devendra Baburao Jagtap @ JD** has preferred the present application u/s.439 or Cr.P.C. for grant of bail in C.R.No.I 179/2013 registered with Kharghar police station for the offence u/s. 307 of IPC and under section 3, 25 and 27 of Arms Act.

2. Brief facts of the prosecution's case are that, informant is Abu Salem who is lodged in Taloja jail, he is accused in 1993 Mumbai bomb blast case. The informant alleged that when he was in Mumbai Central Prison, accused Mustafa Dosa tried to eliminate him and, hence, he was shifted to Taloja Prison. It is also alleged that, Mustafa Dosa and present applicant/accused were working together. On 27/01/2013 at about 08.10 p.m. the informant was in his special barrack yard no.4, room No.46. That time the present applicant/accused and Mustafa Dosa fired bullets on his person. Informant was shifted to rural hospital, where doctors found a CLS on right hand web of thumb and abrasion on left side face.

3. It is submitted that, the applicant/accused was shown arrested in the crime when he was in custody in another case in the year 2009. In that case the applicant was in jail for 12 ½ years. The applicant approached the Hon'ble High Court after his bail application was rejected by Ld.Addl.Sessions Judge, Greater Mumbai. Hon'ble High Court granted him bail on 04/10/2022 in another case.

4. It is submitted that the present applicant/accused is in custody for last 9 ½ years. The charge is not yet framed and trial will take substantial time to commence. Hence, the applicant/accused sought bail.

5. Prosecution opposes bail by say at Exh.106. It is submitted that offence is serious. If bail is granted, accused will tamper with the evidence and may threaten the witnesses. The accused may abscond.

6. A notice was issued to the informant Abu Salem through Talaja Prison. The notice was served and Abu Salem has filed his say below Exh.105. The sum and substance of his say is that, present accused and others had tried to kill him in high security cell. Further he submits that, accused has history of crime. If bail is granted the accused will disturb structure and peace of society. It is submitted that present accused is in constant touch with gangster Chota Shakil and if bail is granted, he will try to manage and threaten the witnesses.

7. Heard Ld.Adv.Shri Nitin Tejpal for the applicant/ accused and Ld.APP Shri C.Y.Patil for the State. Following points are formulated for determination. The points alongwith findings and the reasons thereto are as under.

<u>SR. NO.</u>	<u>POINTS</u>		<u>FINDINGS</u>
1.	Does the applicant/accused has made out justifiable grounds to be released on bail ?	...	In the affirmative.
2.	What order	...	As per final order

REASONS

As to point No.1 :-

8. Ld.Adv.for the accused submitted that in the entire charge-sheet the intention of the alleged crime and its evidence is absent. Further he pointed out the injury certified in the charge-sheet and submitted that, alleged injuries are not on the vital part. He vehemently submitted that since 01/07/2017, the applicant/ accused is in jail and he was not even produced before the Court for more than 2 ½ years.

9. Ld.APP submitted that as per prosecution case accused had fired three round and the offence is serious. He further submits that the informant, the accused are underworld gangsters and hence, accused was not produced in this case as he was and is accused in many cases.

10. Ld.Adv.for the applicant/accused relied upon decision of Suleman Vs State of Uttar Pradesh, Misc.Appln.No.764/2022 in Cri.Appeal 491/2022 decided by Hon'ble Supreme Court on 15/09/2022. In this case Hon'ble Supreme Court considered bail of persons who were in custody for more than 10 years pending their appeal.

11. Hon'ble Parent High Court in bail application No. 4392/2021 preferred by present applicant/accused in C.R.No.I-24/2010 registered at Kurla police station, granted bail on the ground that, prosecution were not able to try the accused for last 10 years for the charges framed against him.

12. Reliance is also placed on the case of Union of India Vs K.A.Najeeb 2021 ALL MR Cri.1587. In this decision Hon'ble Supreme Court laid down that,

“Courts are expected to appreciate the legislative policy against grant of bail but the rigors of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and period of incarceration already undergone has exceeded a substantial part of the prescribed sentence.”

13. Now if the charges leveled against the applicant/accused are considered, then he has alleged to have committed the offence p/u/sec.307 of IPC alongwith offence under Arms Act. If the accused is convicted he may be sentenced to suffer life imprisonment. It be noted that injury sustained by the victim is not on the vital part and one of the injury is mere abrasion.

Hence, maximum punishment would be of 14 years. As per the Government Resolution No.RLP 1006/CR-621/PRS-3 dated 11/04/2008, the period of imprisonment to be undergone including remission is of 14 years for the offence p/u/sec.307 of IPC.

14. Admittedly present accused is in jail since 01/07/2013. He has already undergone more than half of his proposed sentence.

15. The second aspect is that roznama shows that, yet charge is to be framed as production of the accused before this court was not possible as he was facing another cases. Hence, there is uncertainty about commencement of trial. In such circumstances I am of the view that, applicant/accused cannot be detain behind the bar for indefinite period. Already applicant/accused is in jail for 9 years and about 7 months. During this period, there was no progress as such with regard to the commencement of the trial. Hence, I answer point No.1 in affirmative and by imposing stringent conditions and by obtaining heavy surety bail is granted. Hence order.

ORDER

1. Application Exh.101 is hereby allowed.
2. Applicant/accused **Devendra Baburao Jagtap @ JD in CR.No.I 179/2013 registered with Kharghar police station for the offence u/s. 307 of IPC and u/sec.3, 25, 27 of Arms Act be released on P.B. of Rs.1,00,000/- and executing S.B. of like amount.**

3. Applicant/accused shall attend concerned police station, twice in a month i.e. on every 1st and 3rd Saturday in between 11.00 a.m. to 01.00 p.m. till further orders.
4. Applicant/accused shall file name and address of his three blood relatives alongwith his address proof.
5. Applicant/accused shall not leave the territorial jurisdiction of this Court and also the territorial jurisdiction of Maharashtra State, without permission of this Court.
6. Applicant/accused shall not travel abroad.
7. Applicant/accused shall deposit his passport with the concerned police station which shall lie with them till further orders.
8. Applicant/accused shall not directly or indirectly induce or threat informant, the witnesses, or any other person related with the present case.
9. Bail before Ld.JMFC court. Inform concerned police station.
10. Application is accordingly disposed of.

Panvel

Date :-10/02/2023

(Jairaj D.Wadne)

Additional Sessions Judge,
Panvel-Raigad

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	S.J.Sheth
Name of Court	District Judge-1 & Addl. Sessions Judge, Panvel-Raigad
Date of Dictation	10/02/2023
Order signed by the P.O. on	10/02/2023

Order uploaded on	20/02/2023
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