

MHRG170010432024



ORDER BELOW EXH.03
IN SESSIONS CASE NO.46/2024
KHANDESHWAR C.R.NO.189/2023
THE STATE OF MAHARASHTRA V/S. BHAGWAN KHULU
KAJBALE
(PASSED ON 23rd DAY OF SEPTEMBER, 2024)

The applicant/accused-Bhagwan Khulu Kajbale filed this successive application for bail vide Section 439 of the Code of Criminal Procedure to enlarge him on bail.

2. This application is strongly opposed on behalf of prosecution as per reply Exh.04.

3. Points for the determination and my findings thereon for the reasons stated below ;

SR. NO.	POINTS	FINDINGS
I.	Whether the application is maintainable ?	No.
II.	Whether grounds are justified to release the applicant/accused on bail vide Section 439 of the Code of Criminal Procedure ?	No.

III.	What Order ?	The application is Dismissed.
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REASONS

4. Perused application, say filed. Heard learned advocate for the applicant/accused Shri.B.A.Shaikh and learned A.P.P. Shri.R.E.Yerunkar for the State. Heard investigating officer.

AS TO POINTS NO. I TO III :

BRIEF FACTS OF PROSECUTION :

5. Informant is the injured. The incident took place on 16.07.2023, at about 2.30 p.m. She was working as a sales girl in a cosmetic and under-garment shop. She was alone in the shop. The accused came in the said shop at about 2.45 p.m. and snatched her mobile and then thrown on the ground, thus it was damaged. The accused was carrying knife in his hand and started hitting her with an intention to end her life. He assaulted on both hands, on neck, throat and to the chin. He stabbed the knife to her neck and then fled away. She was lying in a pool of blood in the shop. She was immediately hospitalized at MGM hospital.

6. On that count, the informant lodged the report dated 16.07.2023 at Police Station, Khandeshwar. The Police Station

officer registered Crime No.189/2023 for the offence under Section 307, 427 of the Indian Penal Code against present applicant/accused. Later on investigating officer added Section 452 and 506 of the Indian Penal Code.

7. The applicant/accused is arrested on 17.07.2023 and produced before the Court on 18.07.2023. Initially he was remanded to police custody till 21.07.2023. Thereafter he was remanded to judicial custody as per order Dated 21.07.2023. The applicant /accused is presently in judicial custody.

NOTICE TO VICTIM :

8. In the light of directions of Hon'ble Apex court in the case of **Jagjeet Singh V/s. Ashish Mishra @ Monu in Criminal Appeal No.632/2022 Dated 18.04.2022**, a victim is entitled to be heard at the stage of adjudication of bail application of accused. Relying upon these observations, the notice is issued to the informant/victim. The notice is served to her. The informant appeared. She strongly objected to release the applicant on bail.

MAINTAINABILITY OF APPLICATION :

9. Earlier this applicant has moved application for regular bail before charge-sheet vide Criminal Bail Application No.751/2023 and the said application is dismissed by District

Judge-1 and Additional Sessions Judge, Panvel as per order Dated 23.08.2023.

10. Subsequently he filed application for bail vide Criminal Bail Application No.1158/2023 and it is also dismissed by District Judge-1, Panvel as per order dated 20.01.2024. At the time of deciding this application for bail, the charge-sheet was filed. The charge-sheet in this crime was filed before learned magistrate on 13.10.2023.

11. The present application for bail is the third application. After rejection of bail application pursuant to the charge-sheet, this is third application for bail. When this application for bail was presented before this court, simultaneously this accused filed Criminal Bail Application No.927/2024 before Hon'ble Bombay High Court. This fact was informed to the court by the investigating officer.

12. This was a serious issue as to moving simultaneous application and it was being asked to the learned advocate of applicant since it amounts to professional misconduct. Then he has moved one pursis dated 03.08.2024 to withdraw this application for bail. Then subsequently, learned prosecutor before Hon'ble High Court brought to the notice of Hon'ble Bombay High Court this fact as such, Hon'ble Bombay High Court as per order dated

07.08.2024 disposed off the said application for bail since the same does not survive.

13. Then again advocate of applicant appeared before this court and submitted that he wants to continue with the hearing of the application for bail. In the light of foregoing, it is a successive application for bail after charge-sheet.

14. At this stage, it is relevant to cite the observation of Hon'ble Apex Court in the case of Kalyan Chandra Sarkar V/s. Rajesh Ranjan @ Pappu Yadav AIR 2005 SUPREME COURT 921 that, *'even though there is a room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier can move a subsequent application.'*

15. Relying upon this observation applied to the facts of present case, apparently in the case on hand, there is no change in circumstance as to entertain this successive application for bail. The grounds urged in the present application are already decided in earlier application.

16. Then learned advocate of applicant further submitted

that the trial of this case is not commenced. On that count on perusal of the record, it appears that the application for bail is rejected on 20.01.2024 and the present application for bail is filed on 05.07.2024. Meanwhile this applicant moved application for bail before Hon'ble High Court.

17. When this court has asked to the advocate of applicant for hearing on framing of charge on last date itself to which he has denied and submitted that accused has engaged him to the extent of hearing of bail application only. He has no instructions for the trial. The accused has not shown willingness to frame the charge. Thus this submission is nothing but a ground for bail, however as observed above this application for bail is not maintainable. I answer Point No.I in the negative.

WHETHER GROUNDS OF BAIL ARE MADE OUT ?

18. As observed above, the application for bail is not maintainable. Further on perusal of the charge-sheet, it depicts severity of offence. The informant sustained 23 injuries. Looking to her multiple injuries though nature of injury was simple, but she survived in the incident. She was hospitalized for 9 days in Intensive Care Unit (ICU). There is substantial evidence against this applicant. On that count, the applicant does not deserve for bail. I answer Point No.I in the negative. With this, I pass following order ;

ORDER

1.	The application for regular bail vide Section 439 of the Code of Criminal Procedure on behalf of the applicant/accused – Bhagwan Khulu Kajbale is dismissed.
2.	A soft copy of this bail order be forwarded to the applicant/accused through Superintendent, Taloja Jail by e-mail for information in view of observation of Hon'ble Apex Court in the case of In Re Policy Strategy For Grant of Bail in SMWP (CRIMINAL) NO.4/2021, Dated 31.01.2023.
3.	Inform to concerned Police Station accordingly.
	Dictated and pronounced in Open Court.

Place : Panvel.

Date : 23.09.2024

(K.G. Paldewar)
Additional Sessions Judge,
Panvel

Arguments heard on	03 rd , 17 th Day of August, 2024 and 03 rd and 20 th Day of September, 2024.
Judgment/Order delivered on	23 rd Day of September, 2024.
Dictated on	23 rd Day of September, 2024.
Transcribed on	23 rd Day of September, 2024.
Checked and signed on	23 rd Day of September, 2024.

CERTIFICATE

I affirm that the contents of this PDF file
Judgment/Order is same and as per the original Judgment/Order.

Name of the Stenographer : P.S.Mhatre
Name of the Court : Additional Sessions Court,
Panvel
Date of Judgment/Order : 23.09.2024.
Judgment/Order signed on : 23.09.2024.
Presiding Officer : K.G. Paldewar
Judgment/Order uploaded on : 23.09.2024.