

IN THE COURT OF ADDITIONAL SESSIONS JUDGE -1 PANVEL-
RAIGAD, AT : PANVEL
ORDER BELOW EXHIBIT 307 IN SESSIONS CASE NO.133/2019
CNR NO.MHRG170015072019
(DATE 11/04/2022)

1. The applicant/accused No.12 Vikas Ramesh Khandekar has preferred the present successive application u/s. 439 or Cr.P.C. for grant of bail in CR. No.I 139/2014 registered with Kamothe police station for the offence u/s. 302, 341, 120 (B), r.w.34 , of IPC and u/sec.7 (27) of Indian Arms Act and u/sec.37 (1), 135 of Bombay Police Act.

2. Heard Ld. Adv. Shri R.R.Patil for applicant/accused who submitted that the applicant came to be arrested on 21/09/2014 on the complaint of Ashok Mhaskar dated 21/07/2014 against the unknown person with information that on the said day at about 10.50 p.m. when he was at home having dinner, he heard the shouts and call given by someone in his name and accordingly he came out of the house and saw that, some society residents of his building were gathered on the spot where he saw his brother Ankush lying injured in the pool of blood on the road adjoining the building. In the complaint it was also informed that the material time he saw that the right hand palm of Ankush was amputated and there were other severe injuries on his person. In the complaint it was further informed that Ankush was shifted to MGM hospital where he was declared

dead and as such necessary FIR was registered against the unknown persons on 22/07/2014.

3. From the charge-sheet it appears that the investigation agency arrested around 12 accused persons including the present applicant who was arrested on 21/09/2014.

4. Ld.Adv.submitted that, the earlier bail applications of the present applicant has been rejected by this court as well as by the Hon'ble High Court in the past after filing of charge-sheet considering the allegations against him in the matter. Ld.Adv. submitted that, meanwhile the Hon'ble High Court has granted the bail to the co-accused persons viz.Kiran Kanse, Chandrakant Kamane, Aadinath Garje, Anil Chavan, Aakash Pawar subsequently. Ld.Adv.further submitted that, as on today almost 10 accused persons out of 12 have been enlarged on bail.

5. Ld.Adv.submitted that, in the present matter since arrest, the applicant is behind bar for almost 7 ½ years and the proceedings in the matter was initially at snail speed, though after overcoming from the lock-down circumstances it has taken some speed for examining the witnesses. Ld.Adv.submitted that, as on today about 19 witnesses have been examined, however, including the complainant i.e. brother of the deceased Ankush has not supported the case of prosecution and same is the situation for the other witnesses.

6. Ld.Adv.submitted that, as per the case of prosecution the alleged role of the applicant was keeping track on the movements of the deceased prior to the alleged incident and it is further alleged that all the accused persons have committed the crime as a contract killing. Ld.Adv.submitted that, there are no allegations against the accused persons who are released on bail that during pendency of matter they have tried to tamper the prosecution witnesses. Ld.Adv.further pointed out from the list of witnesses of the prosecution in the charge-sheet that, there are about 99 witnesses of the prosecution. Ld.Adv.apprehended that, it will take considerable time for the prosecution for examining the witnesses.

7. Ld.Adv.submitted that, the entire family of the applicant i.e. wife, daughter and mother were totally dependent upon the earning of the applicant and after arrest of the applicant, his daughter also suffered with some medical ailment for which there is no one to look after her in the family.

8. Ld.Adv.submitted that, considering the over all circumstances in the matter that the prosecution witnesses are not supporting the case of the prosecution, applicant be enlarged on bail in the changing circumstances. Ld.Adv. submitted that, applicant is permanent resident at the given address and he has been already enlarged on bail in the cases pending against him. Ld.Adv.submitted that, applicant

undertake to abide the conditions that may be imposed by this court and prayed for bail.

9. Ld.APP Smt.Patil resisted the application and submitted that considering the manner in which the deceased Ankush was assaulted, the offence in hand is serious in nature. Ld.APP.submitted that, on the postmortem notes it appears that due to multiple injuries the deceased has succumbed. Ld.APP. further submitted that, from the memorandum statements of the co-accused persons it revealed that the applicant was involved in conspiracy for eliminating the deceased and he was also noticed nearby the spot of incident for which there are CDR of the mobile phones of the accused persons. Ld.APP.submitted that, though initially there was a delay in proceeding the matter, however, after uplifting the lock-down, the witnesses are being examined by the prosecution. Ld.APP.submitted that, in the event of grant of bail there is possibility of tampering of prosecution witnesses and that he will not be available for trial.

10. Upon hearing the Ld. Advocates and on prima facia perusal of charge-sheet as well as the so far evidence laid down by the prosecution it appears that, the matter in hand is based on circumstantial evidence as the prosecution could not get any direct witness to the incident which occurred nearby residential house of the deceased.

11. Initially the matter was pending before the Hon'ble PDJ at Alibag and thereafter same was transferred from one court to another and lastly it was transferred to Panvel on institution of new Sessions Division. It is matter of record that around 80% of the pending sessions at Alibag have been transferred to the jurisdiction of Panvel spreading over other four adjacent Talukas and as such there was a burden on the court for recording the evidence in the pending matters of which many of the matters have been expedited by the Honble High Court as well as by the Honble Supreme Court. This court alongwith those matters and after taking the bulky board of the bail applications and remand under Special Acts, continued to record the evidence of the prosecution witnesses. It is also to be noted that the present matter has also got set back due to non appearance of the concerned APP or taking steps in the matter by the said office.

12. There is no further need to mention the set back to the trials of under-trial prisoners during lock-down period occurred due to pandemic of Corona-19. The fact in the matter is that as on today 19 witnesses have been examined and though there appears a list of 99 witnesses in the charge-sheet, the Ld.APP informed that, after shortlist there are 55 witnesses are to be examined in the matter. It is a matter of record that unfortunately none of the examined witnesses have supported the prosecution including that of the complainant who happened to be the brother of deceased Ankush. Admittedly the entire case is based on circumstantial evidence.

13. It also appears that the alleged role of the applicant has been transpired from the alleged memorandum statements of co-accused persons or that of present accused showing that he was part of conspiracy. This court apprehends as to whether such type of evidence will be admissible while considering the matter in hand. Ld.APP also fairly submitted that, the panch witnesses for alleged recovery of one iron rod at the hands of present applicant are reported to be not traceable and informed that said panchanama would be otherwise required to be proved by investigation officer.

14. It is a matter of record that since last 7 ½ years the applicant is behind bar. Considering the peculiar circumstance in the matter no one can be said to be on fault as the circumstances prevailed upon in the matter for the pendency of the same in the court. It also appears that out of 12 accused persons, 10 have been enlarged on bail, however, there are no allegations of the prosecution that said released accused persons have tried to tamer prosecution witnesses. The multiple numbers of the remaining witnesses to be examined gives further uncertainty for the conclusion of the trial within the shortest possible time as there are other pending matters of the under-trials on the board alongwith the present matter.

15. Considering the circumstances that almost all the witnesses did not support the case of prosecution and considering the fact of the period of languishing behind the bar

since 2014 this court is of the view that, applicant is required to be enlarged on bail with certain conditions.

16. Needless to mention that the observations made here in are prima facie and it shall not affect on further hearing or the proceeding in the matter. Hence, order.

ORDER

1. Application Exh.307 is hereby allowed.
2. Applicant/accused No.12 **Vikas Ramesh Khandekar** in CR. No.I 139/2014 registered with Kamothe police station for the offence u/s. 302, 341, 120 (B), r.w.34 , of IPC and u/sec.7 (27) of Indian Arms Act and u/sec.37 (1), 135 of Bombay Police Act be released on PB and SB of Rs.15,000/-.
3. Applicant to attend concerned police station on every third Saturday of the month between 11.00 a.m. to 02.00 p.m. till conclusion of the trial.
4. Applicant to attend court dates regularly fixed in this matter.
5. Applicant not to tamper the prosecution witnesses.
6. Bail before this Court.
7. Application is accordingly disposed of.

(Directly dictated in open court on the office computer.)

Panvel
Date :- 11/04/2022

(R.G.Asmar)
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	11/04/2022
Order signed by the P.O. on	11/04/2022
Order uploaded on	25/05/2022