

**Regular Criminal Case No. 28/2014.**  
**(Order Below Bail application vide Exh. 291)**

1. Read application and say of learned A.P.P. Heard advocate for the applicant-accused and learned A.P.P. at length.

2. This application is filed by accused No. 4 Kailas Umaji Awaghade for releasing him on bail. According to him, when he was on bail he met with an accident and in said accident he received hurt to his leg and waist. Further, there are injuries on his person and he is suffering from jaundice and piles and he requires treatment in private hospital. Further, he submitted that his old age mother, wife and children dependent upon him. He is ready to abide the Court conditions and he will not abscond. Hence, he requested to release him on bail.

3. The learned A.P.P. resisted this application contending that after releasing on bail accused Kailas was absconded and he was arrested in execution of non-bailable warrant. His wife i.e. accused no. 7 Apeksha is also absconded. If accused is released there is possibility of his absconding. Hence he prayed for rejection of bail application.

4. In this case charge is framed against applicant-accused and other accused persons for the offences punishable under Sections 420, 467, 468 and 471 r.w. 34 of the Indian Penal Code vide Exh. 97. As per prosecution case, applicant-accused and other accused persons

have cheated informant and prosecution witnesses i.e. other 25 unemployed youths by preparing false and forged document in respect of recruitment in Railway Department. According to prosecution, applicant-accused and other accused persons have cheated unemployed youths by extracting money for giving job in Railway department.

5. In view of order dated 20-02-2015 below bail application of applicant-accused vide Exh. 158 this Court granted bail him considering his illness and released him. However, he failed to abide the Court conditions and remained absent in the Court. Therefore, non-bailable warrant issued against time to time. Then he appeared and sought an order of cancellation of non-bailable warrant on 05-11-2015 in view of order below Exh. 283. Thereafter, on 18-11-2015, 03-12-2015 and 10-12-2015 his advocate sought his exemption from personal appearance on the ground of his illness. In view of order dated 10/09/2014 passed in Criminal Application No.568/2014, the Hon'ble Bombay High Court directed this Court to proceed with the trial expeditiously and keep hearing of this case atleast once in a week. But since 31-12-2015 applicant-accused remained absent in the Court, therefore, non-bailable warrant issued against him, which is ultimately executed and he remanded in M.C.-Jail on 01-02-2016.

6. Informant Uday and more than 25 unemployed youths from the vicinity of Tasgaon and Kavathe-Mahankal are victims of the crime. On perusal of first information report and statement of witnesses i.e. unemployed youths, prosecution has prima-facie case

against the accused persons. The facts came on record the accused persons had run false training center to cheat the victims and applicant-accused No.4 Kailas has played vital role at said false training center. Further it is alleged by the prosecution that applicant-accused involved in collecting money from prosecution witnesses for giving job in Railway department. In these circumstances, again granting of bail to the applicant-accused would defeat the end of justice and failure of justice.

7. According to accused, his family is dependent on him and if he is not released on bail, his family will face starvation. Thus, the accused claimed bail on the ground of sympathy. However, in my opinion bail cannot be granted in the name of sympathy. Sympathy for one i.e. applicant-accused may mean lack of sympathy for another i.e. victims. In the name of human approach for the applicant-accused Court cannot exhibit lack of sensitivity for the feelings and sentiments of the weeping victims.

8. No any documentary evidence produced by the applicant-accused about his alleged accident and medical treatment in support of this application. It is not ground of accused that he is suffering from any illness for which treatment is not available in Government Hospital. If really applicant-accused is suffering from jaundice and piles, then he can get appropriate treatment in Government hospital and for that purpose he is not entitled to release on bail. When the applicant-accused was released on bail, he remained absent in the proceeding. His wife accused no. 7 is

absconded and not yet arrested. In these circumstances, there is possibility that applicant-accused may be absconded, if he released on bail. Hence, I decline to exercise discretion to grant bail in favour of applicant-accused. Thus, taking into consideration the totality of the facts and circumstances, the application of the applicant-accused Kailas Awaghade is liable to be rejected. Hence, the order. :

### **ORDER**

The application is rejected.

**TASGAON.**

Date: 10<sup>th</sup> March 2016.

Sd/-xxx

(A. A. Chendke)

JUDICIAL MAGISTRATE, FIRST CLASS,

**TASGAON.**