

ORDER BELOW APPLICATION (EXHIBIT 39) IN
SESSION CASE NO. 69/2021
(STATE VS. MANISHA)
(PASSED ON : 12/12/2022)

Nature of the Application.

1. This is an application filed by the accused-Manisha Bhima Dhane (for short 'accused') seeking interim/temporary bail under Section 439 of the Code of Criminal Procedure (for short 'Cr.P.C.') in Crime Register (for short 'C.R.') No. 202/2021 registered at Mangalwedha police station under Sections 302 and 120-B read with Section 34 of the Indian Penal Code (for short 'I.P.C.').

Contents in the Application.

2. The accused has contended that she is a under-trial prisoner. Her daughter-Anjali Santosh Babar (for short 'daughter') is suffering from kidney disease and she is advised for kidney transplant. She being her mother is a fit person to donate her kidney for her daughter. Therefore, she is required to attend for transplant surgery.

3. If the application is granted she is ready to abide by the conditions imposed.

4. On these grounds the accused has prayed to grant the application.

Contents in the Reply of the Additional Public Prosecutor.

5. The Additional Public Prosecutor (for short 'A.P.P.') has filed say.

6. The A.P.P. has prayed to pass necessary order.

The Arguments.

7. I have heard Shri. D. A. Yadav, advocate for the accused and Shri S. V. Wangikar, Additional Public Prosecutor (for short

'A.P.P.') for the prosecution, in extenso.

8. They argued in consonance with their contentions in the application, say and keeping in mind the established principles of Law.

9. In order to avoid repetition it is not necessary to note the arguments.

Points and Findings.

10. Upon hearing the following points arise for my consideration and I record my findings thereon as under for the reasons to follow :-

	Points	Findings
1)	Whether a case has been made out by the accused for granting the relief of interim bail, as prayed for ?	Yes, Partly.
2)	What order ?	Application Granted, Partly. As per final order.

Reasons as to Point Nos. 1 and 2.

11. Before proceeding to discuss the question of entitlement of the accused for temporary/interim bail for better appreciation, let me refer the following rulings :-

(i) Raisa Begum Vs. State of U.P., 1995 Cr.L.J. 1067 (All.), wherein the Hon'ble High Court has observed :-

“The Court which has authority to try an issue and grant a relief has authority and jurisdiction to consider and dispose of all incidental questions pertaining to it. If a Court has authority to decide the bail matter, it has authority to consider a temporary/interim bail or parole or dealing with the custody of the accused and manner of it till the

required material is collected."

(ii) Haji Peer Bux Vs. State of U.P., 1993 Cr.L.J. 3574

(All.), wherein the Hon'ble High Court has observed :-

"The Courts possess jurisdiction to release an accused on temporary/interim bail pending final disposal of the bail application. No hard and fast rules can be laid down in this regard. But release on temporary/interim bail is no ground for grant of bail, which has to be made only on merits."

12. There cannot be any dispute that the accused is involved in a serious offence and her previous applications seeking bail are rejected on merit.

13. The accused has produced on record the letter issued by the Department of Nephrology dated 10/12/2022 (Exhibit 39/1) which make it clear that she is required to attend transplant surgery on 16/12/2022.

14. The final report clarifies that the other accused-Ananda was having illicit relation with the accused and her husband-Bhima (for short 'Bhima') was objecting this illicit relation and therefore, the accused and the other accused-Ananda killed Bhima.

15. The accused has denied her involvement in the offence in toto. However, considering the number and nature of injuries seen in the photos of Bhima and also in the post mortem report, in my firm opinion the injuries found on the person of Bhima were caused definitely due to strangulation by the accused and the other accused-Ananda.

16. The trial has not commenced. Therefore, I am of the considered view that if interim bail is granted in favour of the accused she will create hurdles in the trial or will try to tamper the evidence.

Therefore, her application seeking interim bail can not be granted, as prayed.

17. Admittedly, the daughter is suffering from kidney disease and it is necessary to transplant her kidney and for that purpose transplant surgery is scheduled on 16/12/2022. The accused is the mother and is intending to donate her kidney for her daughter. I, therefore, deem it necessary and just to release the accused on interim bail by imposing stringent conditions in order to lessen the intensity of the apprehension expressed by the A.P.P.

18. To sum up, considering the nature of offence and positive involvement of the accused in it she cannot be released on interim bail, as prayed. However, considering the fact that the daughter is in need of kidney transplant and the accused is ready to donate her kidney, if she is allowed to attend transplant surgery, it will suffice the purpose. The accused has failed to produce on record anything which will prove prima-facie that it is necessary for her to take rest after surgery till 12/03/2022, hence, this prayer cannot be accepted on any count. If that be so, the contention of the accused that her application deserves to be granted can be accepted, partly, prima-facie. Therefore, in the interest of justice if the accused is allowed to go to Mumbai i.e. to stay for the period from 13/12/2022 after 10.00 a.m. till 26/12/2022 upto 6.00 p.m. sharp, no harm or injustice will be caused to the prosecution and it will not create any hurdle in the trial.

19. Considering the above-mentioned facts and circumstances of the case, I am inclined to grant the application seeking interim bail.

20. Accordingly, I answer point No.1 in the affirmative, partly and point No. 2 as application granted, as per final order.

21. I leave open the contentions of the parties on the merits of the trial.

22. In the result, following order.

ORDER.

1.	The application (Exhibit 39) is granted, partly.
2.	The accused-Manisha Bhima Dhane, be released on interim bail in Crime Register No. 202/2021 registered at Mangalwedha police station (Session Case No. 69/2021) from 13/12/2022 after 10.00 a.m. till 26/12/2022 upto 6.00 p.m. sharp on her furnishing a personal bond in the sum of Rs. 50,000/- (Rupees Fifty Thousand only) with one surety in the sum of Rs. 50,000/- (Rupees Fifty Thousand only), on the following conditions :-
(i)	The accused shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.
(ii)	The accused shall not tamper with the prosecution evidence by intimidating the witnesses in any manner.
(iii)	The accused shall not indulge in any criminal activity or commission of any crime after being released on bail.
(iv)	The accused shall not abscond and furnish her address to the police along with address proof.
(v)	The accused shall surrender before the Superintendent, Solapur District Prison on or before 26/12/2022 upto 6.00 p.m. sharp.
3.	The husband of Anjali that is to say Santosh Babar is directed to file an undertaking, before this Court on or before 13/12/2022 with assurance to this Court that during the period of interim bail, the accused will not indulge into any such activity which adversely affect the trial.

4.	The breach of any of the conditions or in case of violation of any of the conditions imposed, the personal bond of the accused and the surety bond of the surety shall be liable to be forfeited.
5.	The Superintendent, Solapur District Prison, is directed to inform compliance of the order.
6.	The concerned police station be informed, accordingly.

(Pronounced in Open Court).

Date : 12/12/2022.

(M.B.Lambe),
Additional Sessions Judge,
Pandharpur.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order is same word to word as per the original Order.

- (a) Name of the Stenographer : Sou. M. M. Kulkarni
- (b) Court : M. B. Lambe,
District Judge – 1 &
Addl. Sessions Judge, Pandharpur.
- (c) Order signed by P.O. on : 12/12/2022
- (d) Order uploaded on : 13/12/2022