



ORDER BELOW APPLICATION (EXHIBIT 180) IN
SESSIONS CASE NO. 96/2019
(STATE VS. TANAJI)
(PASSED ON : 29/01/2024)

Nature of the Application.

1. This is successive application filed by the accused-Tanaji Baliram Bhosale (for short 'accused') seeking bail under Section 439 of the Code of Criminal Procedure in Crime Register (for short 'C.R.') No. 369/2019 registered at Mangalwedha police station under Section 302, 363, 364, 201, 120-B of the Indian Penal Code (for short 'I.P.C.').

Contents in the Application.

2. The accused has contended that all the co-accused are released on bail. The bail application of the accused was also decided on 14/12/2022 by the Hon'ble Supreme Court. Now, all the material witnesses are examined and the case is still pending.

3. He is innocent and has not committed any offence. There is no evidence to prove that he committed the offence. He has no concern with the death of Santosh Shinde (for short 'Santosh').

4. There was no motive to commit murder of Santosh, as alleged. The cause of death of Santosh is not clear. The statement of the co-accused is not admissible in evidence. There is no circumstantial evidence to prove his involvement in the offence.

5. The investigation is complete. If released on bail, he will not abscond and is ready to abide by the conditions imposed.

6. On these grounds the accused has prayed to grant the

application.

Contents in the Reply of the Additional Public Prosecutor.

7. The Additional Public Prosecutor (for short 'A.P.P.') has filed reply (Exhibit 181).

8. The A.P.P. has strongly objected the application. He has contended that the accused with the help of the other accused has committed serious offence. The accused was last seen with Santosh. It is transpired during investigation that the accused and the other accused have committed murder of Santosh.

9. If released on bail, the accused will threaten the witnesses and will tamper the evidence.

10. On these grounds the A.P.P. has prayed to reject the application.

The Arguments.

11. I have heard Shri. M. B. Shinde, advocate for the accused and Shri. S. V. Wangikar, A.P.P for the prosecution, in extenso.

12. They argued in consonance with the contentions in the application, say and referring the documents produced on record. In order to avoid repetition it is not necessary to note those arguments.

Points and Findings.

13. 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 the witnesses mentioned by the prosecution in the pursis (Exhibit 183) are the material witnesses, as alleged ?	Yes.

2)	Whether all the material witnesses are examined by the prosecution, as alleged ?	No
3)	Whether there is substantial change in circumstances and fact situation after the rejection of the previous bail applications, as alleged ?	No.
4)	Whether a case has been made out by the accused for granting the relief of bail, as prayed for ?	No.
5)	What order ?	Application Rejected.

Reasons as to Point Nos. 1 and 2.

14. The accused had filed Petition for Special Leave to Appeal (CRL.) No. 1916 of 2022 (for short 'petition') before the Hon'ble Supreme Court.

15. The Hon'ble Supreme Court while disposing of the petition vide order dated 14/12/2022 has observed as under :-

"We make it clear that the petitioner would have the liberty of renewing his prayer for bail before the Trial Court **after the material witnesses are examined and if the trial is not completed within one year from this date**".

16. Admittedly, the trial is not completed within one year from 14/12/2022 because of workload due to pendency of 1616 civil cases and 1302 criminal cases in this Court.

17. The prosecution has filed pursis (Exhibit 183) clarifying that 17 witnesses are material witnesses and are to be examined.

18. The A.P.P. has forcefully contended that all the 17 witnesses mentioned in the pursis (Exhibit 183) are to be examined therefore, it cannot be said that the accused has right to renew his prayer for bail as made clear by the Hon'ble Supreme Court.

19. Shri. Shinde, advocate for the accused vehemently contended that the material witnesses namely Sunil Shinde, Dhananjay Kadam and Anand Rayban are already examined and therefore, the accused has right to renew his prayer for bail as made clear by the Hon'ble Supreme Court.

20. Now, it is to be seen Who are the material witnesses ? and Whether all the material witnesses are examined by the prosecution ?

21. The Hon'ble Supreme Court in the case of Narain and others Vs. State of Punjab, 1958 SCC OnLine SC 47 (for short 'Narain') has observed :-

"13. The question then is, was Raghbir a material witness ? It is an accepted rule as stated by the Judicial Committee in Stephen Seneviratne v. King that **"witnesses essential to the unfolding of the narrative on which the prosecution is based, must, of course, be called by the prosecution"**. It will be seen that the test whether a witness is material for the present purpose is not whether he would have given evidence in support of the defence. **The test is whether he is a witness "essential to the unfolding of the narrative on which the prosecution is based"**. Whether a witness is so essential or not would depend on whether he could speak to any part of the prosecution case or whether the evidence led disclosed that he was so situated that he would have been able to give evidence of the facts on which the prosecution relied. It is not however that the prosecution is bound to call all witnesses who may have seen the occurrence and so duplicate the evidence. But apart from this, the prosecution should call all material witnesses".

22. The Hon'ble Supreme Court in the case of Takhaji Hiraji Vs. Thakore Kubersing Chamansing, AIR 2001 SC 2328 (for short

'Takhaji') has observed :-

"So is the case with the criticism leveled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. **It is true that if a material witness, which would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise,** or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness which though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the Court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the Court ought to scrutinise the worth of the evidence adduced. The Court of facts must ask itself -- whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the Court can safely act upon it uninfluenced by the factum of non-examination of other witnesses"

23. In the first information report (for short 'F.I.R.') lodged by Dattatray Suresh Pujari (for short 'informant') against the accused and the other accused, it is alleged that he by joining hands with the other

accused kidnapped Santosh on 29/07/2019 from Mangalwedha Bus Stand at about 16.30 hours. Santosh was made to drink liquor by him and other accused and was taken by them in a Car to Alkunte Nagar, District Vijapur and was killed by them by assaulting with stones and hence, C.R. No. 369/2019 is registered against him and the other accused.

24. After considering the legal principles laid down by the Hon'ble Supreme Court in the case of 'Narain' and 'Takhaji', the question is, can it be said that the 17 witnesses mentioned by the prosecution in the pursis (Exhibit 183) are material witnesses.

25. After giving serious and careful thought to the statements and role of the 17 witnesses mentioned by the prosecution in the pursis (Exhibit 183) I am of the firm view they are material witnesses. The names of the witnesses and the reasons for holding them as material witnesses are :-

a) Dattatray Pujari-The Complainant.

Because after receiving information he and other police officials started inquiry and searched for Santosh with the help of SDR, CCTV footage, CDR, mobile location.

b) Somnath Gaikwad-A Panch Witness.

Because he is the panch of the seizure panchnama who will unfold the essential part of the prosecution case.

c) Vikram Dhavare-A Panch Witness.

Because he is the panch of the seizure panchnama who will unfold the essential part of the prosecution case.

d) Sandeep Patil and Mahesh Pawar-The Panch Witnesses.

Because they are panchas of memorandum panchnama of the accused dated 11/08/2019 and 13/08/2019 and

they will unfold the essential part of the prosecution case to prove the accused's involvement in the offence.

e) Anand Rayban and Sandeep Patil-The Panch Witnesses.

Because they witnessed the seizure of closed circuit television (for short 'CCTV') footage in which the accused and Santosh were last seen.

f) Mahaveer Kambale and Mahaveer Bhosale-The Panch Witnesses.

Because they are the panch witnesses of memorandum panchanama of the other accused-Ganesh Survase.

g) Kusum Shinde-A Witness.

Because she has clarified in her statement dated 09/08/2019 that the accused and the other accused-Dada met Santosh at the ST Stand of village Mangalwedha on 29/07/2019 at about 12.00 noon that is to say before the incident.

h) Prakash Patil and Prakash Thengil-The Panch Witnesses.

Because they have clarified in their statements dated 10/08/2019 and 11/08/2019 that they have seen the accused and the other accused-Anita while talking and narrating how the incident occurred means they are witnesses of extra judicial confession given by the accused and the other accused-Anita.

i) Rahul Falake-A Witness.

Because he has clarified in his statement dated 10/08/2019 that he had seen the accused and the other accused before incident.

j) Mantesh Mali-A Witness.

Because he has clarified in his statement dated 13/08/2019 that he had seen the accused at petrol pump and he will bring on record the involvement of the accused in the offence.

k) Datta Mali-A Witness.

Because he has clarified in his statement dated 07/09/2019 that he had given a vehicle on rent to the accused for proceeding to Kurduwadi and he will bring on record the involvement of the accused in the offence.

l) Sanjay Tad-A Witness.

Because he has clarified in his statement dated 23/08/2019 that he gave sim number 76668993113 and he will bring on record the involvement of the accused in the offence.

m) Madan Shinde-A Witness.

Because he has clarified in his statement dated 10/09/2019 that he had given Zylo vehicle to the accused and he will bring on record the involvement of the accused in the offence.

26. Thus, it is clear like cloudless sky that the 17 witnesses mentioned by the prosecution in the pursis (Exhibit 183) are material witnesses and their evidence is essential to the unfolding of the narrative on which the prosecution is based. These all 17 witnesses are able to throw light on the prosecution case positively and they are in a position to give evidence of the facts on which the prosecution relied.

27. Consequently, I hold that the witnesses mentioned by the prosecution in the pursis (Exhibit 183) are the material witnesses and

they are not examined by the prosecution.

28. Accordingly, I answer point No. 1 in the affirmative and point No. 2 in the negative.

Reasons as to Point Nos. 3 to 5.

29. In the F.I.R. it is alleged against the accused and the other accused that they killed Santosh brutally by kidnapping him. Under such circumstances when Santosh is killed brutally by the accused, it cannot be said that he is falsely implicated in the offence.

30. There is no dispute that the CCTV footage is recovered from the S.T. Stand, Mangalwedha in which it is clearly seen that Santosh was in the company of the accused. The accused is identified as the person who was last seen with Santosh. The accused has failed to clarify his presence with Santosh that too before the incident. The statements of the witnesses prove that the accused is involved positively in killing Santosh, prima-facie. Therefore, it cannot be said that the accused was not involved in killing Santosh.

31. In view of all the facts and the intention gathered from all the circumstances it could be said that case is made out under Section 302 of the I.P.C., prima-facie.

32. Admittedly, the previous bail applications filed by the accused are rejected, on merit. While rejecting his previous bail applications, it is observed that there is sufficient evidence against the accused proving his positive involvement in the offence with which he is charged and therefore, he is not entitled for bail.

33. After considering the facts and circumstances and the role played by the accused in commission of crime it is clear like cloudless sky that the accused has committed an offence under Section 302 of the I.P.C. which is of serious nature. There is sufficient evidence against

the accused, prima-facie. Therefore, the accused does not deserve to be enlarged on bail.

34. The word 'parity' means the state or condition being equal or on a level; equality; equality of rank or status. In other words it means being placed at the same footing. All the accused of a case always do not stand on the same footing. While considering bail of different accused the court has to find out whether they stand on the same footing or not. Even if role assigned to various accused is same yet they may stand on different footing. Nonetheless the principle of grant of bail on parity cannot be allowed to be carried to an absurd or illogical conclusion so as to put a judge in a tight and straight jacket to grant bail automatically.

35. Thus, the word 'parity' connotes a state when a person is placed on the same footing as the other person. However, parity cannot be the sole ground for granting bail even at the stage of second or third or subsequent bail applications when the bail applications of the co-accused whose bail application had been earlier rejected are allowed and co-accused is released on bail. Even then the court has to satisfy itself that, on consideration of more materials placed, further developments in the investigations or otherwise and other different considerations, there are sufficient grounds for releasing the applicant on bail. If on examination of a given case, it transpires that the case of the applicant before the court is identically similar to the accused on facts and circumstances who has been bailed out, then the desirability of consistency will require that such an accused should be also released on bail.

36. Undisputedly, the co-accused are released on bail. However, the accused is not entitled to be released on bail on the

ground of parity because the role played by the accused, as alleged by the prosecution is not identically similar to the co-accused on facts and circumstances, who have been bailed out. On the other hand the accused is the master mind of the offence.

37. I am unable to persuade myself with the argument advanced by Shri. Shinde, advocate for the accused that the accused is entitled for bail because (i) he is not involved in any criminal activity (ii) he is falsely implicated in this case with ulterior motive and (iv) the trial is delayed. The reasons are :-

- That positive involvement of the accused is brought on record that he killed Santosh, prima-facie.
- That the offence alleged to have been committed by the accused is very serious.
- That the possibility of the accused tampering with the witnesses cannot be ruled out considering his involvement and the nature of offence.
- That this is successive bail application filed by the accused as per order of the Hon'ble Supreme Court on the ground that the trial is not concluded within one year and all the material witnesses are examined, though it is true that the trial is not concluded within one year but 17 material witnesses as is held supra are yet to be examined.
- That this is successive bail application filed by the accused on almost similar grounds under which his previous bail applications came to be rejected. **No new ground or substantial change in circumstances and**

fact situation after the rejection of his previous bail applications is brought on record, which will lead to grant this application.

- That the trial is delayed due to pendency of 1616 civil cases and 1302 criminal cases in this Court.
- That considering my discussion, supra.

38. To sum up, the offence with which the accused is charged is of serious nature. **There is prima-facie evidence to hold accused's involvement in the offence** (emphasis supplied). The facts disclosed from the final report would show that the evidence collected is sufficient to constitute an offence under Section 302 of the I.P.C. as well as positive involvement of the accused. If the application is granted it will hamper the trial. The involvement of the accused in the crime registered against him is clear.

39. **Considering the merits of the matter, gravity of the offence and positive involvement of the accused, he does not deserve release on bail. The 17 witnesses mentioned by the prosecution in the pursis (Exhibit 183) are witnesses essential to the unfolding of the narrative on which the prosecution is based and are to be examined. There is no substantial change in circumstances and fact situation brought on record by the accused which will lead to grant this successive bail application. Therefore, there is no other alternative before me than to take a similar view which was taken while rejecting earlier application for bail. (emphasis supplied).**

40. In view of the above-mentioned facts and circumstances of the case, I am declined to grant bail to the accused.

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

42. Accordingly, I answer point Nos. 3 and 4 in the negative and point No. 5 as application rejected.

43. In the result, following order :-

ORDER

The application (Exhibit 180) is rejected.

(Pronounced in the open Court).

Sd/-

Date : 29/01/2024.

(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 : 29/01/2024
- (d) Order uploaded on : 02/02/2024