

State Vs Gabarya @ Subhash Bhosale

ORDER PASSED BELOW EXH.156

(Passed on 07.01.2026)

1] This is an application submitted by accused Gabarya @ Subhash Ramesh Bhosale for releasing him on bail under Section 439 of Code Of Criminal Procedure, 1973. Prosecution has filed its reply on the overleaf of the application and raised objection.

2] Heard Advocate Shri. S. B.Gundage for accused and Ld. Advocate Shri. V. H. Katkar, Ld. Addl. PP for State. Perused record.

3] In this case C. R. No.402/2019 under Section 302, 143, 147, 148, 149 of Indian Penal Code, 1860 (In short, "IPC") is registered against this accused along with other four accused in Lonand Police Station. In this case, investigation is completed and charge-sheet is filed against all accused. In this case, this accused is arrested on 27.12.2019 and in jail today.

4] It is alleged that on 22.12.2019 this accused Gabarya and his wife accused No.3 Sampubai have visited residential area of complainant namely Chaya Namanya Pawar resident of Bhurkarwadi, Taradgaon, Tal.Phaltan Dist.Satara at about 2.00 p.m., made recce and went away. Then on the same day, at about 6.00 p.m., this accused Gabarya, another accused namely Arun Pawar, Sampubai Bhosale, Chochya Shinde, Shabanam Shinde

arrived near house of complainant Chaya Pawar by car. At that time near bathroom deceased Namanya Hachal Pawar and Aashibai @ Tarana Ramesh Bhosale were chitchatting. All above mentioned accused came near the above mentioned both deceased persons. At that time, this accused Gabarya was holding long spear. He stated both deceased in loud voice that they are alleging commission of theft by him and falsely implicating him in the theft case. Then he dealt blow of knife on the throat of deceased Aashibai Ramesh Bhosale. At that time, another deceased Namanya Pawar tried to intervene fighting. Therefore, this accused Gabarya dealt blow of spear in the stomach of deceased Namanya. Then he caught hold both hands of Namanya and dragged him. Then all accused fled away from the spot. At that time, witness Nakshi Kale, Zendu Bhosale arrived on the spot. All persons gathered on the spot shifted both deceased Namanya Pawar and Aashibai Bhosale to Government Hospital, Taradgaon and then to Civil Hospital, Satara. Doctors from Civil Hospital, Satara examined both deceased and declared them as dead. Hence, complaint is registered against all accused on the same day.

5] In this case, investigation is completed and charge sheet is filed against all accused under Sections 302, 143, 147, 148, 149 of IPC. The maximum punishment prescribed for the alleged offence is death penalty or imprisonment for life. So the alleged offence against this accused is very serious in nature.

6] In this case investigation officer has seized spear used in the alleged offence at the instances of this accused under disclosure

statement and seizure Panchanama dated 30.12.2019. In this case, there are eye witnesses namely Chaya Namanya Pawar, Ramesh Jayram Bhosale and Rajiya Bhosale. Investigation officer has recorded statement of said witnesses under Section 164 of Cr.P.C. The alleged incident took place at day light time. The deceased Aashibai Bhosale and Namanya Pawar are mother and maternal uncle of this accused Gabarya Pawar. All above stated facts show that prosecution is having very strong prima facie case. All above stated facts prima facie show that this accused has played vital role in the commission of alleged offence and committed it in preplanned manner.

7] In this case charge against all accused is framed at Exh.112 on 17.01.2023. Then one witness P.W. No.1 Yogesh Namdev Bhongale is examined by prosecution vide Exh.30, he is cross- examined by Advocate for accused No.1 and 2 and no cross order is passed against accused No.3 and 4 on 22.12.2023. Then said no cross order is set aside by passing order below Exh.162 on 18.01.2024. Since then till today, advocate for accused No.3 and 4 has not taken effective steps for conducting cross-examination of P.W. No.1. Record shows that Advocate for accused No.4 and 5 has prayed for adjournment on 22.11.2023 vide Exh.34. Then this accused has prayed for his transfer from Kolhapur Central jail to Satara District Jail vide Exh.36 on 22.12.2023. Advocate for accused No.4 and 5 have prayed for adjournment on 11.03.2024 vide Exh.39. This accused is transferred to District Prison, Satara by passing common order below Exh.41, 43, 45 on 05.08.2024. Record also shows that, Advocate Shri. Sudhir Pataskar etc have appeared

for accused No.4 and 5 vide Exh.159 on 06.01.2025 and N.B.W. issued against accused No.3 and 4 was cancelled by passing order below Exh.160. Record also shows that advocate for accused No.3 and 4 has availed adjournments on 26.03.2025 vide Exh.164. Then this accused has filed Vakalatnama of Advocate N.D.Mohite vide Exh.172 on 26.08.2025. Afterwards Advocate N.D.Mohite for this accused filed pursis at Exh.177 on 31.10.2025 and submitted that, he has cancelled his Vakalatnama. So all above stated facts show that, as advocate for accused No.3 and 4 has not taken effective steps for cross examining the P.W. No.1, this case is not proceeded ahead.

8] In this case, previous bail applications submitted by this accused at Exh.23 is rejected by predecessor of this court on merit on 30.10.2023. While rejecting said application, it has been observed by my predecessor that though witnesses were present, advocates for accused No.1 to 4 were absent and hence prosecution cannot be held responsible for delay in trial. Record shows that, this accused has preferred Bail Application No.1360/2024 before Hon'ble Bombay High Court which is also rejected by Hon'ble Bombay High Court on 23.04.2024. While rejecting said application it has been observed by Hon'ble Bombay High Court that, *"2.Despite being incarcerated since 2019, considering the gravity of the accusation and the incriminating material included in the charge-sheet and for the further reason that the trial has already commenced, I am not inclined to entertain this application. The same is dismissed."*

9] In support of this bail application, Advocate for accused
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has kept his reliance on following reported case laws:

- [1] *Zulfikar @ Zulfi Yasin Behlim Vs. The State of Maharashtra, Bail Application no. 3474 of 2024, 2024:BHC-AS:46250*
- [2] *Vikas Maruti Belunke Vs. The State of Maharashtra, Bail Application no. 3473 of 2024, 2024:BHC-AS:36590*
- [3] *Akash Satish Chandalia Vs. The State of Maharashtra, Bail Application no. 1779 of 2023, 2023:BHC-AS:28583*

10] But on the backdrop of facts of the case in hand reference with profit can be made of a reported case *Ansar Ahmed Vs. State of Uttar Pradesh and Another, Criminal Appeal no. 1168 of 2023 (Arising out of SLP (CRL) No.8487 of 2021)* in which it has been observed by Hon'ble Apex Court that, " 11. We are of the view that in the case in hand, several important factors ought to have been kept in mind by the learned High Court while considering the prayer of the respondents for their enlargement on regular bail. The murder of Ashfaq Ahmad took place in broad day light. The occurrence has been witnessed by the appellant and two more eye witnesses. Two of the accused were nabbed at the spot. It was apparently a case of contract killing. There is material to indicate the motive behind the commission of gruesome murder of Ashfaq Ahmad.....

12. The other important factor is that Razi Ahmad @ Manu is one of the eye witnesses. He is yet to depose as a prosecution witness. Though not as a general rule but it is expedient and is always in the interest of criminal justice system that the prayer for bail is considered after ensuring that the statements of the vital witnesses stand recorded and there is no likelihood of influencing

or tampering their evidence.

13. The appellant has also placed on record the copies of orders passed by the Trial Court on various dates after the release of private respondents on bail by the High Court. The order dated 15.03.2022 suggests that the respondent - Subhash Yadav was absent from trial and non-bailable warrants were issued against him. There are series of subsequent orders to indicate that both the respondents have been seeking exemption from personal appearance and thus the trial has been completely stalled. Learned Additional Advocate General informs that till date, only one witness has been examined. It is the solemn duty of the Court to ensure that while extending the protection of liberty to an accused within the meaning of Article 21 of the Constitution, the interest of the prosecution is equally protected and the concession of bail should not be allowed to be misused to the prejudice of the prosecution of the victim.

18.....It may be true that an accused cannot be permitted to be languished in jail indefinitely but the Courts while considering the bail application need to wait for the appropriate stage where such a relief can be granted without any adverse impact on the prosecution case. That stage is yet to reach in the present trial as some of the crucial eye witnesses are yet to depose."

11] In this case, it is alleged that this accused has committed murder of his mother and maternal uncle. The alleged incident took place in day light time and there are eye witnesses. All accused and witnesses are related with each other and hence known to each other. Deposition of said eye witnesses is yet to be

recorded in court. Progress in the case has not taken place as Advocate for accused no. 3 and 4 has not taken effective steps for cross -examination of PW no. 1. Accused no. 3 and 4 have not attended all dates in the Court and submitted their exemption applications on time to time. Hence, trial is protracted. For all said reasons and in view of ratio laid down by Hon'ble Apex Court in above cited case law, this accused is not entitled for bail at this stage. On the backdrop of above stated facts and reasons, case laws relied upon by Advocate for accused are not applicable to case in hand.

12] Hence, I proceed to pass the following order.

ORDER

The bail application at Exh.156 is hereby rejected.

PHALTAN
Date : 07/01/2026

(R. S. Patil-Bhosale)
Addl. Sessions Judge, Phaltan.

CERTIFICATE

I affirm that the contents of this P. D. F. file order are word to word as per original.

Name of Stenographer: Sau. Tanuja S. Bagal, Stenographer Grade-1