

**Order Below Exh.40 in Sessions Case No.48/2022
(State Vs. Subhash Pakhale & ors.
(Passed on 30/09/2024)**

1] This is an application under section 439 of Criminal Procedure Code filed by accused No.1 Subhash @Bablu Marotrao Pakhale in connection with S.C.No.48/2022 arising out of Crime No.160/2022 registered in Arvi Police Station for the offence punishable u/sec. 302 r/w Sec.34 of the Indian Penal Code.

2] Heard learned Advocate Mr.R.R.Rathi for applicant and learned APP Mr. P.P.Soitkar for the State. Perused reply and record.

3] It is the case of prosecution that Abhiman Pakhale (deceased) was the friend of accused No.1 and other co-accused persons. On 27/02/2022 some quarrel was taken place amongst them and hence all the accused set Abhiman on fire by pouring kerosene on his person on 28/02/2022 and accordingly report came to be lodged by Rahul Pakhale.

4] Advocate Mr. R.R.Rathi submits that alleged incident was taken place in the broad day light in the courtyard of the house of accused No.1 which is densely located residential area, in spite of that there was no eye witnesses to the incident, which appears to be very unnatural. He further submits that deceased sustained 87% burn injury and so it is very difficult to believe that he informed his son about involvement of accused in the present crime. He further submits that if deceased had been in position to speak, then he would have informed the said

fact to the persons, who gathered there immediately after the incident and he would not have waited for his son to come on the spot. He further submits that motive cited by the prosecution does not appears to be probable as deceased and all the accused were friends and deceased were residing in the house of accused No.1 since last 15 days. He further submits that applicant is retired army person, he is in jail since 01/03/2022. Though charge came to be framed but trial would take its own time to conclude. Hence, prayed for grant of bail to the applicant.

5] Whereas learned APP submits that spot of incident is courtyard of the house of applicant and as per provision of Section 106 of Indian Evidence Act, applicant is having knowledge as to how deceased sustained burn injury, but as on today there is no explanation has come on record from the side of applicant. He further submits that deceased informed his son Rahul about the involvement of applicant and co-accused persons and said fact cannot be disbelieved at this stage only on the ground that deceased was sustained 87% burn injury and hence he was unable to speak. He further submits that though trial may take some time to conclude, but considering the seriousness of crime and considering the circumstances in the charge-sheet against the accused, no case is made out for grant of bail and hence application may be rejected.

6] It appears that first bail application of applicant came to be rejected on 23/12/2022 and thereafter till today there is no progress except framing of charge. So it appears that his first

bail application came to be decided prior to about 21 months, but there is no substantial progress in the matter and it is change in circumstance and hence present bail application is tenable.

7] On perusal of statements of Dhanpal Pakhale, Mahesh Pakhale, Nikhil Deshmukh, Ananta Deopare, Amol Wanjari, it appears that none of the witnesses are eye witnesses to the incident and they came to know about the incident from somebody else. It appears that Amol Wanjari is friend of Rahul i.e. first informant, who is son of Abhiman (deceased). It appears that Amol Wanjari came to know about incident from one Devidas, but learned APP fairly conceded that the Investigating Officer has not recorded statement of said Devidas.

8] Post mortem report indicates that Abhiman Pakhale sustained 87% burn injury and he has not disclosed any information to the persons gathered on the spot soon after the incident. It is pertinent to note that Abhiman was resident of the said village, so he could have informed the involvement of accused to the persons who gathered there. Whether Abhiman Pakhale (deceased) was able to speak or not, is the matter of evidence. It appears that incident occurred in the broad day light in the courtyard of applicant, which appears residential locality. So naturally it is expected that somebody must have seen the incident, but Investigating Officer could not record statements of any witnesses, who saw the alleged incident.

9] It appears that applicant is retired army man, who is permanent resident of Wardha District, there is no criminal antecedents against him, he is behind bars since 01/03/2022 i.e. about 30 months. It appears that charge is framed, but trial is yet to be started and it will take substantial time to conclude the same. Considering all the facts and circumstances, case is made out for grant of bail to the applicant. Hence, I proceed to pass the following order.

ORDER

- 1) Application is allowed.
- 2) Applicant/accused Subhash @ Bablu Marotrao Pakhale be released on bail, in Crime No.160/2022, registered with Police Station, Arvi for the offence punishable under section 302 r/w Sec.34 of IPC on furnishing solvent surety of Rs.50,000/- and executing P.R. Bond of like amount on following conditions :
 - i) He shall not pressurize the prosecution witnesses and shall not tamper with the prosecution evidence.
 - ii) He shall not indulge himself any type of offence and shall attend court dates punctually.

Wardha
Date : 30/09/2024.

(Sanjay J. Bharuka)
Sessions Judge, Wardha.

CERTIFICATE

I affirm that the contents of this PDF file order are same word to word, as per the original order.

Vinod V. Kadu
Stenographer (Grade-I)