

**Order Below Exh.55 in Sessions Case No.48/2024
(State Vs. Subhash Pakhale & ors.
(Passed on 22/10/2024)**

1] This is an application under section 439 of Criminal Procedure Code filed by accused No.3 Maroti Korkuji 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. Karde for applicant and learned P.P. Mr. G.V.Takwale for the State. Perused reply and record.

3] It is the case of prosecution that Abhiman Pakhale (deceased) was the friend of applicant and other co-accused persons. On 27/02/2022 some quarrel was taken place amongst them and hence on 28/02/2022 all the accused including applicant set Abhiman Pakhale on fire by pouring kerosene on his person, accordingly report came to be lodged by Rahul Pakhale.

4] On perusal of record, it appears that first bail application of applicant came to be rejected on 21/07/2022 vide Misc.Cri. No.160/2022, applicant challenged the said order before Hon'ble High Court, which came to be rejected on 18/10/2022. It further appears that charge came to be framed by my predecessor on 11/04/2023, but inspite of that prosecution could not examine any witness till today i.e. after lapse of 18 months. Moreover, bail came to be granted to co-accused Subhash Pakhale on 30/09/2024. In view of above scenario, delay in trial is change in circumstance to file the present bail application and hence it is tenable.

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

6] On perusal of post mortem report, it appears that Abhiman Pakhale (deceased) sustained 87% burn injuries to his person. It further appears that Abhiman Pakhale (deceased) has not disclosed any information to the persons, who were 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 were present on the spot. Whether Abhiman Pakhale (deceased) was able to speak or not, is the matter of evidence and at this juncture it is not possible to make any comment on it.

7] On perusal of record, it appears that alleged incident occurred in the broad day light in the courtyard of co accused Subhash Pakhale, which is situated in residential locality. In this background, 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.

8] On perusal of order passed by Hon'ble High Court in Cri. Application No.1186/2022, dt. 18/10/2022, it appears that in para 7 of the said order, Hon'ble High Court directed applicant to make application before the Sessions Court in writing for framing of charge and then matter will be conducted as per the mandate given in Section 309(1) of Cr.P.C. In view of said direction, it was expected from the applicant to make such application, but he failed to file such application and plausible explanation has come on record to that effect. But fact remains that after framing of charge, prosecution could not examine any witness till date and hence, though applicant could not comply the order of Hon'ble High Court, his bail application cannot be rejected on the same ground.

9] It appears that applicant is senior citizen having age of 74 years, 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 long back, but prosecution could not examine any witness till today, which indicates that it will take substantial time to conclude. Record indicates that co-accused Subhash Pakhale granted bail on 30/09/2024, role of said co-accused and present applicant appears to be similar one and hence he is entitled for bail on the ground of parity also. 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 Maroti Korkuji 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 : 22/10/2024.

(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)