

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2309 OF 2023

Pandharinath Vidhyadhar Amberkar ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH
INTERIM APPLICATION NO.3855 OF 2023
IN
BAIL APPLICATION NO.2309 OF 2023

Arvind Nagale ...Applicant

IN THE MATTER BETWEEN

Pandharinath Vidhyadhar Amberkar ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. N. N. Gawankar a/w Ms. Poorva Pednekar i/b Mr. Sachin M. Bandkar, for the Applicant.
Mr. P. H. Gaikwad, APP, for the Respondent-State.
Ms. Gayatri Singh, Senior Advocate a/w Mr. Swaraj Jadhav i/b Mr. Vijay Hiremath, for the Intervenor.

CORAM: MADHAV J. JAMDAR, J.
DATED: 06th MAY 2024

P. C.:

1. I have heard submissions of Mr. Gawankar, learned Counsel for the Applicant, Mr. Gaikwad, learned APP for the Respondent-State and Ms. Singh, learned Senior Counsel for the Intervenor on earlier dates.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973* (“CrPC”). The relevant details are as follows:

1	C.R. No.	19 of 2023
2	Date of registration of F.I.R.	7 th February 2023
3	Name of Police Station	Rajapur, District-Ratnagiri
4	Sections invoked	302, 201 of the <i>I.P.C., 1860</i> ; 4 of the <i>Maharashtra Media Persons and Media Institutions (Prevention of Violence and Damage or Loss of Property) Act, 2017</i> .
5	Date of incident	6 th February 2023
6	Date of arrest	7 th February 2023
7	Date of filing Charge-sheet	3 rd May 2023

3. The prosecution case as reflected in the F.I.R., Charge-sheet and various statements recorded during the investigation, is as follows:

(i) The State government had proposed a petroleum refinery project (“project”) in the Ratnagiri district of Maharashtra under the aegis of a joint venture incorporated as the ‘Ratnagiri Refinery and Petrochemicals Limited’ (RRPCL). There is both-opposition and support, to the project. The Applicant is a supporter of the project. The deceased-Shashikant Warishe was a journalist-reporter and a resident editor of ‘Dainik Mahanagari Times’ (“newspaper”) since 14th October 2013. The said newspaper is published daily in Marathi language from Mumbai, Thane, Raigad, and Palghar districts and the same is also published on

WhatsApp in Nashik and Ratnagiri districts, and the same is also available with newspaper vendors.

(ii) As per the prosecution case, the deceased used to cover and write various news reports and articles regarding the potential and possible adverse effects of the proposed project on the soil and agricultural lands in the region. He had also written several articles making allegations against the Applicant that the Applicant had purchased various lands in the vicinity of project site, in his own name as well as in the name of his relatives. A few of such articles published in the said newspaper from 27th July 2021 till the date of the incident in question i.e. 6th February 2023, are annexed to the Charge-sheet. More than 50 such articles and news reports were authored by the deceased and published in the said newspaper during the said period.

(iii) On the date of the incident, i.e. on 6th February 2023, an article authored by the deceased reporting the criminal activities of the Applicant and his banners being displayed in the city with photos of the Prime Minister, Chief Minister and Deputy Chief Minister of Maharashtra and Home Minister of the State, was published in the newspaper (Page 609). The said article is titled as under:

“मा. मुख्यमंत्री शिंदेजी आणि मा. उपमुख्यमंत्री फडणवीसजी महोदय, आपल्यासोबत कुणाचे फोटो? शहानिशा कराच..... पंतप्रधान मोदीजींसह राज्याचे मुख्यमंत्री आणि उपमुख्यमंत्र्यांच्या ‘बॅनर’ वर गंभीर गुन्ह्यातील आरोपीचे फोटो रिफायनरी विरोधी शेतक—यांचा सनसनाटी आरोप.”

English translation of the same is as under:

“Hon’ble Chief Minister Shinde ji and Hon’ble Dy. Chief Minister Fadnavis ji, whose photo is this along with you? Please verify... Sensational allegation of farmers opposed to the refinery project that photo of hardened criminal appears on a banner along with photo of Prime Minister Modi ji, and Chief minister and Dy. Chief Minister of Maharashtra”

In the said article, photographs of the 3 banners bearing photographs of Prime Minister, Chief Minister and Deputy Chief Minister of Maharashtra along with that of the Applicant which were displayed in Ratnagiri district, were published. In the said news item, it is highlighted that the photograph of the Applicant, who has a criminal background, prominently appears along with photographs of the Prime Minister, Chief Minister, and Deputy Chief Minister.

(iv) Various witnesses whose statements are recorded by the Police have stated that they sent the said news article to the Applicant on WhatsApp. The Applicant arrived at his office at about 10.00 a.m. when he started receiving the said news article on WhatsApp from his acquaintances.

(v) At about 10.30 a.m., some witnesses had a meeting with the Applicant for some business purpose and they left at 12.45 hrs. At that time, they heard the Applicant saying as follows:

“एकाचं काम तमाम करायचं हा.... हा हा (हसण्याचा आवाज) आज आम्ही.... आज करणार त्याचा.... आज आम्ही..... झोप नाय

लागणार आम्हाला.... वाचली बातमी ? बातमी वाचली?...
नाय? ... पाठवतो थांब.”

English translation of the same is as under:

“I want to finish one person... ha ha (laughing) today I will... Today I will finish him... Today I... Won't be able to sleep otherwise... did you read the news?... did you read the news?... no?... Wait I'll share with you.”

The said conversation was recorded.

(vi) At about 1.00 p.m., the Applicant suddenly saw the deceased riding his two-wheeler and going from Jawahar Chowk to Jakat Naka, Rajapur. The Applicant immediately took his car and drove in the direction of the deceased. The Applicant saw the deceased. He drove his car in the wrong direction and then with an intention to commit the murder of deceased collided with the deceased head-on while the deceased was riding his two-wheeler. Upon the said impact, the deceased fell down and got fatally injured while the Applicant continued to drag the said two-wheeler for some distance.

(vii) There was no technical or mechanical fault in the said car being driven by the Applicant. Report of an expert i.e. J.P.

Research India Private Limited, records as follows:

- “1) Car driver was driving close to edge of road on the right-hand side.*
- 2) Car driver did not react to avoid Impact with the scooter even when visibility was adequate.*
- 3) After impacting scooter, car driver reacted about 4 seconds later and steered the car let.*

4) *Car came to a stop about 80 meters from point of impact. Car driver did not brake and stop the car immediately after impact.*

The car driver reaction and car stopping from distance indicates that the car driver did not attempt to avoid the impact with the scooter.”

4. Mr. Gawankar, learned Counsel for the Applicant raised following contentions.

(i) The accident took place at about 1.15 pm on 6th February 2023. No offence whatsoever was registered for about 18 hours. On 7th February 2023 at about 8.28 a.m., an offence under Section 308 of the *Indian Penal Code, 1860* (“IPC”), was registered. Thereafter it transpired that the deceased was a journalist and a press reporter who carried an article in the said newspaper against the Applicant. According to the Police, the collision was not merely an accident but was with an intention to cause death and knowledge, and therefore Section 302 of the IPC was added on 8th February 2023.

(ii) The entire case of the prosecution is un-believable. One Suryakant Mahadev Terwankar was the eye-witness, however, he could not have witnessed the scene of the offence in question from ‘Dina Shetty Garage’. The said statement is in variance with statement recorded under Section 164 of the CrPC on 17th February 2023 before the learned J.M.F.C.-1, Rajapur. Thereafter

the statements of Rajendra Fadtare and Rupesh Vikhabe, the two-wheeler mechanics have been recorded. He contended that all these statements are an afterthought.

(iii) He submitted that as per the prosecution case, the Applicant went to the wrong side of the road, however, in fact it was the deceased who had come on the said road from a 'no entry' point. Thus, he submitted that the prosecution case is entirely false. He submitted that the deceased was not wearing a helmet although he was riding his vehicle on the Mumbai-Goa highway. He submitted that although it is the case that the Accused dragged the deceased and his two-wheeler for a distance of nearly about 70 meters, it was not possible to drag the scooter intentionally. The deceased had fallen on the spot after the collision and he was admittedly not dragged with the said scooter. He submitted that it is unconscionable to believe that a collision to the scooter by the right-side bumper portion of a jeep would cause a head injury to the rider of the scooter.

(iv) He submitted that the motive attributed is the animosity between the Applicant and the deceased, however, there is nothing to show that the Applicant was personally acquainted with the deceased.

(v) He submitted that after the said accident, the Applicant immediately informed the Police personnel, Sachin Kashiram Veer.

(vi) He submitted that the case is of circumstantial evidence and the chain of circumstances as reflected from the statement of witnesses is not complete based on the following three points:

(a) There is nothing to show that the Applicant was acquainted with the deceased;

(b) There is no material to show that the Accused was aware that the deceased was to travel on the said service road on the day of the incident.

(c) If the Applicant was travelling at a very high speed, it is not possible to identify a person coming from opposite direction in a fraction of a second.

Thus, he submitted that the Applicant has been falsely implicated in this case. It is the main contention of Mr. Gawankar, learned Counsel for the Applicant that the incident in question is an accident and the offence as alleged has not been committed.

(vii) Mr. Gawankar submitted that there are greater chances of an acquittal. He also pointed out page 469, where under the death summary it is specifically mentioned that the patient had suffered a cardiac attack. He submitted that no name is mentioned regarding the

author of the news article in question. He submitted that the deceased was moved from one hospital to another and then to a third hospital and proper medical treatment was not administered and therefore, the deceased died as a result of the same.

5. On the other hand Mr. Gaikwad, learned APP for the State and Ms. Gayatri Singh, learned Senior Counsel for the intervenor strongly opposed the Bail Application.

6. Mr. Gaikwad, learned APP pointed out statements of various witnesses and material on record. On the basis of said statements and material, Mr. Gaikwad, learned APP raised the following contentions:

(i) The distance between the spot of actual incident and the spot where the said two-wheeler was dragged by the Applicant's vehicle was approximately 275 feet. He therefore submitted that even after the said incident, the said vehicle was not immediately stopped and in fact the said two-wheeler was dragged for about 275 feet. He submitted that the Applicant was not aware that the deceased had fallen down immediately because of the collision and was fatally injured due to the garage impact of the said collision and therefore his two-wheeler was dragged for such a long distance to ensure that the deceased did not survive the fall. He pointed out the scene of the offence and submitted that the Applicant deliberately drove his four-wheeler on the wrong side

and committed the offence in question.

(ii) He submitted that the contention that the Applicant was not aware of the deceased is incorrect as the deceased was working as a journalist-reporter of Mahanagari Times since 17th October 2013 i.e. since 10 years ago from the date of the accident. He submitted that there are two strong groups in Ratnagiri district, one supporting the project and the other opposing the project. He submitted that the deceased has authored several news articles regarding the adverse effects of the proposed project. There are more than 50 articles authored by the deceased. He submitted that there are various articles in which allegations have been made against the present Applicant that he has purchased various land parcels in his name and in the name of his relatives, in the vicinity of the project site. He pointed out that various witnesses had shared the news article which was published on the day of the incident i.e. 6th February 2023 with the Applicant on WhatsApp and various persons had also called the Applicant enquiring about the same. Therefore, he submitted that the contention that there is no material on record to show that the Applicant was acquainted with the Accused, is not correct.

(iii) He submitted that the news article dated 6th February 2023 was specifically targeting the Applicant and is concerning the Applicant. He further submitted that on 6th February 2023 at 12.45 p.m., the Applicant had stated that he wanted to kill somebody and that he would not get sleep till that happens. He submitted that it is significant to note that while expressing the said intent, the Applicant made a reference to the newspaper article. Therefore, he submitted that the Applicant was acquainted with the Accused and he had declared his intention to kill the deceased. He pointed out the panchanama where the said conversation was recorded i.e. of Shailesh Shyamsundar Patil, Raju Amberkar and Bharat Mirgule (page 256).

(iv) He submitted that at about 1.00 p.m., the Applicant suddenly saw the deceased riding his two-wheeler and going from Jawahar Chowk to Jakat Naka, Rajapur and immediately he drove his four-wheeler in the same direction and crashed into the two-wheeler which the deceased was riding. He submitted that no attempt was made to stop the car immediately after the collision. He pointed out the report of expert i.e. J.P. Research India Private Limited, details whereof are already set out herein above.

(v) Thus, Mr. Gaikwad, learned APP submitted that the Applicant deliberately drove his four-wheeler - Mahindra Thar in the wrong direction and collided with the deceased while the deceased was riding his two-wheeler.

(vi) He also submitted that the Applicant is an influential person in the said locality and therefore, the Bail Application be rejected.

7. Ms. Gayatri Singh, learned Senior Counsel for the Intervenor adopted the arguments of Mr. Gaikwad, learned APP. She further submitted that the material on record clearly shows that the Applicant was furious with the deceased for writing and publishing an article against the Applicant and exposing his criminal activities. She further submitted that the circumstances show that the Applicant drove his four-wheeler at a very high speed on the wrong side and that even after the Applicant collided with the two-wheeler of the deceased, he dragged the two-wheeler for about 275 feet with the scooter under the said four-wheeler. He did not stop the car to look at the deceased but got out of his car, locked it, exited via the dirt road on the highway and fled in the direction of Hotel Water Park and made a call to constable- Sachin Veer and Rupesh Gurav. All these factors show that the Applicant is involved in the offence in question. She submitted that there are similar antecedents and the Applicant is notorious for his illegal and

criminal activities. She submitted that the Applicant is an influential person with political clout and therefore is capable of influencing the witnesses. She therefore prayed that the Bail Application be rejected.

8. The parameters to be taken into consideration by the Court while granting bail are well established. The Supreme Court in *Y v. State of Rajasthan*¹ reiterated the parameters to be taken into consideration by a Court while granting bail as held by the Supreme Court in *Gurcharan Singh v. State (Delhi Admn.)*² wherein it was held as under:

*“24. Section 439(1) CrPC of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), CrPC against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) CrPC of the new Code. **The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out.**”*

¹ (2022) 9 SCC 269

² (1978) 1 SCC 118

(Emphasis added)

Thus, the following parameters are *inter alia* required to be taken into consideration by the Court while considering the Application for grant of bail:

- a) the nature and gravity of the circumstances in which the offence is committed;
- b) the position and the status of the accused with reference to the victim and the witnesses;
- c) the likelihood of the accused fleeing from justice;
- d) the likelihood of the accused repeating the offence;
- e) the likelihood of the accused jeopardising his own life being faced with a grim prospect of possible conviction in the case;
- f) the likelihood of the accused influencing witnesses;
- g) the history of the case as well as of its investigation, and
- h) other relevant grounds.

It is also settled law that at the stage of granting bail, the Court is not required to enter into a detailed analysis of the evidence in the case. Such an exercise may be undertaken at the stage of trial.

9. Thus by applying above parameters, the material on record will be taken into consideration herein below only for the limited purpose of ascertaining the *prima facie* involvement of the Applicant in the offence in question and the nature and gravity of the circumstances in which the offence was committed. The circumstances which emerge from the various statements and material collected by the prosecution show that:

(i) The Applicant is a known supporter of the said oil refinery project. The deceased is the resident editor of said newspaper Mahanagari Times having circulation in various places including Ratnagiri where the project is proposed and also the said daily newspaper was published on WhatsApp. The deceased has authored about 50 news articles against the said project and also making allegations against the Applicant that the Applicant had purchased several land parcels in the vicinity of the proposed site of the said project, in his own name and in the name of his relatives.

(ii) On the day of the incident, i.e. on 6th February 2023, an article was published in the said newspaper, highlighting that the banners with photos of the Prime Minister, the Chief Minister, and the Dy. Chief Minister with the Applicant are put up in Ratnagiri although the Applicant is having criminal activities. The said news was widely published and various witnesses had sent the same to the Applicant on WhatsApp.

(iii) The Applicant had expressed his intention to eliminate somebody and that until it was done, he would not sleep peacefully and he mentioned about the news article while expressing the said intent.

(iv) The incident in question took place when the Applicant suddenly saw the deceased riding his two-wheeler and the Applicant drove his car in the wrong direction and then with an intention to commit the murder of the deceased, he collided with the deceased head-on while the deceased was riding his two-wheeler. Upon the said impact, the deceased fell down and got fatally injured while the Applicant continued to drag the said two-wheeler for some distance. The Applicant dragged the scooter for about 275 feet when the scooter was stuck under his vehicle.

(v) The material on record indicates that the car driver was driving close to the edge of the road on the right-hand side and that the car came to a stop about 275 feet from point of collision. The car driver did not brake and stop the car immediately after the collision.

Thus, *inter alia* these circumstances on record *prima facie* show the involvement of the Applicant in the offence in question.

10. *Prima facie*, there is no substance in the contention of Mr. Gawankar that as there was nothing to show that the Applicant was acquainted with the deceased and therefore he was not involved in the offence in question. It is to be noted that even as per the submissions of Mr. Gawankar, learned Counsel for the Applicant, the Applicant is

involved in the incident and the incident in question is an accident. The deceased was a journalist and that he had authored a series of articles against the Applicant, including a very prominent and widely shared article on the day of the incident in question. Therefore, there is no substance in the said contention.

11. The other point argued by Mr. Gawankar is that there was no material on record to show that the Accused was aware that the deceased was to travel on the said service road on the day of the incident. There is no substance in the said contention as the material on record shows that the Applicant suddenly saw the deceased on the service road riding his two-wheeler and that the Applicant immediately rushed towards his car and deliberately drove towards the direction of the deceased and killed the deceased by crashing his four-wheeler into the deceased who was riding his two-wheeler and then the Applicant attempted to portray the same as an accident.

12. The submission that the Applicant was not wearing the helmet is also not relevant as the material on record makes out a *prima facie* case of the offence in question.

13. The other contention raised that the cause of death is shown as cardiac arrest also has no substance as even as per the contention of Mr. Gawankar, learned Counsel for the Applicant that the incident in question has taken place when the Applicant was driving the car and

the said incident is an accident. There were severe injuries on the body of the deceased as seen in the post-mortem examination report which also records that the cause of death as “*death due to head injury*” (pages 467 and 504).

14. The submission of Mr. Gawankar, learned Counsel for the Applicant that the statement of eye-witnesses namely Suryakant Mahadev Terwankar, Rajendra Fadtare and Rupesh Vikhabe are unbelievable, cannot be considered at the stage of granting bail. In any case, *prima facie* there is not much variance in the statement of Mr. Suryakant Terwankar recorded during investigation and his statement recorded under Section 164 CrPC. He has stated that he has brought his scooter in the said Dina Shetty Garage for repairs and he was standing on the road when he witnessed the incident. There is nothing to disbelieve the said statement at this stage. In fact, statement of Mr. Rajendra Fadtare and Rupesh Vikhabe also shows that Mr. Suryakant Terwankar was not actually in the garage and he had gone outside. In any case, detailed analysis of the evidence is not to be done at the stage of granting bail and it is only to be ascertained on the basis of material on record whether *prima facie*, the Applicant is involved in the crime.

15. It is required to be noted that as there are several instances of violence against journalists and media personnel, the *Maharashtra Media Persons and Media Institutions (Prevention of Violence and*

Damage or Loss to Property) Act, 2017 was enacted and the said Act came into effect in the State of Maharashtra on 17th December 2019. The offence under the said Act is also registered against the Applicant.

16. As already noted herein above, this is a case where *prima facie* involvement of the Applicant can be seen. The prosecution case clearly shows that the Applicant is an influential person having contacts with politicians. If the Applicant is released on bail, there is a likelihood of the Applicant influencing the witnesses. Therefore, considering the circumstances on record, no case is made out for grant of bail.

17. However, it is clarified that the observations made in this order are only for the purpose of consideration of the Bail Application and all these observations are *prima facie* in nature. It is clarified that the Trial Court shall not be influenced by these observations.

18. Accordingly, the Bail Application is rejected.

19. In view of dismissal of the Bail Application, nothing survives in the Interim Application and the same is also disposed of.

20. As in the incident in question, as per the prosecution case, a journalist has been killed, learned Trial Court is requested to conclude the trial on priority.

BHALCHANDRA
GOPAL DUSANE

[MADHAV J. JAMDAR, J.]

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