

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.941 OF 2015

Mangesh N. Gade V/s. The State of Maharashtra & Anr.

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Prothonotary's orders	Court's or Judge's orders
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Mr.S.C. Halli i/by Mr.Subhash Hulyalkar, for the applicant-appellant.
Mr.A.R. Patil, for the respondent-State.

CORAM : A.R. JOSHI, J.
DATE : 17TH JULY 2015

P.C.:

1. Heard learned counsel for the applicant-appellant.
Also heard learned APP for the State. This is the repeated bail application preferred by the applicant-original accused no.1.

2. Earlier Criminal Bail application No.134/2014 was rejected by this court on merits by detailed order dated 07th February 2014. Now the present application is preferred on apparent change of circumstances.

3. Prior to dealing with the alleged change in circumstances, certain factual position while rejecting the earlier

application for bail can be narrated in order to ascertain facts as against the present applicant. There was assault on the husband of the complainant women on 14th March 2013 when they were traveling on Motor Cycle at about 9.30 a.m. Present applicant and one co-accused came on the Motor Cycle and accosted husband of the complainant. A dash was given to the Motor Cycle of the husband of the complainant. Due to said impact, complainant women and her husband fell on the ground. The co-accused took out one sickle and assaulted the victim. Present applicant took out a sword and also assaulted the victim. There were more than 13 injuries and cut and incised wounds and there were three compound fractures. The injuries were on both the hands, legs, chest, back and shoulders of the victim. Apparently this was a murderous assault. The cause of death is the multiple incised wounds all over the body. On these facts and after analysing the material available from the chargesheet papers, this Court rejected the application for bail vide order dated 07th February 2014 as mentioned earlier.

4. Now only ground for entertaining the present application is apparent two changed circumstances. Firstly that the trial has not started and even the charge is not framed and secondly now the C.A. Report is available regarding cloths and sword recovered at the instance of the present applicant. Said CA report was not available when earlier bail application was rejected.

5. So far as the first ground is concerned in the opinion of this Court, per-se not starting the trial can not be considered as a changed circumstances. The gravity of the offence and the length of time for which the case is pending prior to framing of the charge and starting the trial are the relevant considerations. In the present matter the gravity of the offence is already explained while rejecting the earlier bail application and also narrating certain facts in the present bail order. In any event considering that the offence is punishable under section 302 read with 34 which attract minimum punishment of life and also if circumstances are such, the death penalty, the fact that the case is

not taken for trial within these two years, cannot be considered as changed circumstance and hence this first ground cannot prompt this Court to view the matter differently.

6. So far as the second circumstance is concerned it is argued on behalf of the applicant that the CA report though was available to the police, was not filed in the charge sheet papers when earlier bail application was heard in February 2014. Finding of the CA report is that the cloths and the sword recovered at the instance of the present applicant under section 27 of the Evidence Act, did not have any blood stains. In fact this factual position was brought before this court during the argument on the earlier bail application no.138 of 2014. That time it was brought to the notice of this court on behalf of the applicant that as per the contents of the discovery panchnamma there was no blood on the sword and as such this aspect was taken in support of the applicant so far as use of the sword is concerned. As such the factual position is that though there was no reference to the contents of the CA report, the final outcome of

the CA report was known to the party and it was argued before the court as not having blood on the sword and it was dealt in detail in para 4 of the earlier order. So again this position also cannot be change in the circumstance.

7. Apart from the above change in circumstances which are not to be considered for grant of bail on repeated attempt, certain arguments were advanced as to no criminal antecedents and no involvement of the applicant in the dispute over land, between co-accused and victim. However, this cannot be considered as a change in the circumstances and all these aspects are apparently available to be argued and infact deal with in the earlier order.

8. In view of the above there is nothing to view the present application differently and hence the application is accordingly dismissed and disposed of.

(A.R. JOSHI, J.)