

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.568 OF 2022

Pankaj s/o Tukaram Bhosale,
Age 41 years, Occ. Agriculture,
R/o. Handerguli, Tq. Udgir,
Dist. Latur

...Applicant

Versus

The State of Maharashtra
Through Police Station Wadhawana,
Dist. Latur

...Respondent

...

Mr. S.J. Salunke, Advocate for the applicant.
Mr. V.M. Kagne, APP for the respondent-State.

...

CORAM : S.G. MEHARE, J.

RESERVED ON : 06th JULY, 2022

PRONOUNCED ON : 28th JULY, 2022

ORDER :-

1. The applicant-accused has filed this application under Section 439 of the Code of Criminal Procedure.
2. Crime bearing No.54 of 2020 was registered against the applicant with Police Station Wadhawana, District Latur, for the offence punishable under Section 302 r/w 34 of the Indian Penal Code and Section 4, 25 of the Indian Arms Act. The applicant was arrested on 03.04.2022 and was in magisterial custody. The charge sheet has been filed against him.
3. The applicant claimed that he has Schizophrenia, and since 2009, he has been under medication. The applicant was

observed to have delusions. He used to write letters to the various authorities about the secret treasures under the temples.

4. The applicant had preferred an application for bail bearing No.1489 of 2020 before this Court. This Court, by its order dated 23.12.2020, directed that the applicant be referred to for examination before the Civil Surgeon, District Civil Hospital or such other Medical Officer, as the State Government has prescribed in this regard as provided under Section 328 of the Code of Criminal Procedure. At that time, the case of the applicant was not committed to the Sessions Court. It was also directed to forthwith submit the report of the medical examination of the applicant to the Court of concerned Magistrate, and the learned Magistrate shall proceed thereupon in terms of provisions of Section 328 of the Code of Criminal Procedure. The liberty was also granted to the applicant to file an application before the learned Sessions Court for bail, specifically on the ground of health pertaining to a psychological disorder. This Court also observed that it is expected from the Sessions Court to decide the said application in terms of provisions of Section 330 of the Code of Criminal Procedure.

5. Pursuant to the above order, the learned JMFC, Udgir, conducted the inquiry, and the applicant was referred for treatment at the Regional Mental Hospital at Yerwada, Pune. The Superintendent

of the Regional Mental Hospital at Yerwada, Pune, communicated to the learned JMFC that the condition of the applicant is improved and he is fit for trial. The learned Sessions Judge was pleased to reject the bail application, so he approached this Court.

6. Learned counsel for the applicant has vehemently argued that the applicant was entitled to be released as provided under Section 330 of the Code of Criminal Procedure. However, the learned Sessions Court came to the wrong conclusion that the applicant was fit for trial, and as of now, he has no Schizophrenia, and no treatment is required. Therefore, in no case, the applicant will be released on bail on the ground of illness.

7. Learned APP has supported the view expressed by the learned Sessions Court on the ill-health of the applicant. He would submit that since the applicant is cured and capable of putting his defence, he may not be released in view of Section 330 of the Code of Criminal Procedure. He prayed to reject the application.

8. When the matter before the learned Magistrate was lying for the inquiry report, the learned Magistrate exercising power under Section 328 of the Code of Criminal Procedure having reason to believe that the applicant was of unsound mind and incapable of making his defence. He referred him to the Medical Officer at Yerwada, Pune. The applicant was admitted to Regional Mental

Hospital at Yerwada, Pune, and was under treatment for symptomatic and in need of further indoor psychiatric treatment. Thereafter, the Superintendent of Regional Mental Hospital at Yerwada, Pune, by his letter dated 01.11.2021 communicated to the learned JMFC, Udgir, the progress report of the applicant that the applicant was under treatment and needed further indoor psychiatric treatment. The Superintendent of Regional Mental Hospital at Yerwada, Pune, by his letter dated 02.12.2021, communicated to the learned JMFC, Udgir, that the patient is improved and was put before the Visitors Committee for assessment and was declared fit for discharge and fit for trial.

9. The learned counsel for the applicant has vehemently argued that the patient still has Schizophrenia and is incapable of making his defence. Therefore, he could have been released as provided under Section 330 of the Code of Criminal Procedure.

10. Section 330 of the Code of Criminal Procedure substituted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 27 (w.e.f. 31-12-2009) was substituted as follows :

“S.330. Release of lunatic pending investigation or trial.-(1)
Whenever a person is found, under section 328 or section 329, to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one

in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

(2) If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the State Government :

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the State Government may have made under the Indian Lunacy Act, 1912 (4 of 1912)."

11. If it is found that the accused is incapable of making his defence due to an unsound mind, even if the case is not bailable, the Court may release him on sufficient security on the assurance being given that he shall be properly taken care of. If such assurance is not forthcoming and sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit and shall report the action taken to the State Government.

12. The provision of Section 330 is explicit that if the person of unsound mind and incapable of making his defence may be

released on sufficient security being given, that he shall be properly taken care of and shall be prevented from doing injury to himself. Such a person can be released for the purpose of appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf. When such person is detained under the provisions of Section 330, the concerned Medical Officer or the Officer appointed by the State Government certify that in his own opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of Section 332; and the certificate of such Inspector-General or visitors shall be receivable as evidence. It has been provided under Section 332 of the Code of Criminal Procedure that when the accused appears or is brought before the Court or the Magistrate, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

13. The procedure laid down under Section 332 is that after the appearance or of bringing such person before the Magistrate or the Court, the Court or the Magistrate shall consider whether he is capable of making his defence, and the inquiry or trial shall proceed. This section clearly indicates that the satisfaction of the Court or the

Magistrate is material to consider the capability of the applicant to make his defence. Therefore, after referring such a person to the Medical Officer with a report that the applicant is capable of making his defence, the Magistrate or the Court shall inquire independently and consider whether such accused is capable of making his defence. He shall examine the accused and then, after due application of mind, should come to a conclusion about the capability of such accused to make his defence.

14. The amended Section 330, has given the discretion to the Court or Magistrate to release such person on security. Subsection (2) of the said section is specific that if the Magistrate or the Court is of the opinion that bail should not be taken or if sufficient security is not given, then he shall order the detention of such accused in safe custody. It has been provided in Section 330 that no order for the detention of the accused shall be made otherwise than in accordance with such rules as the State Government may have under the Indian Lunacy Act, 1912. (Now under the State government Rules under Mental Healthcare Act, 2017).

15. The record reveals that the applicant was sent to the Regional Mental Hospital at Yerwada, Pune. He was under treatment there. Lastly, by a communication dated 02.12.2021 addressed to the learned JMFC, Udgir, it has been communicated that the patient is

improved and was put before the Visitors Committee for assessment and was declared fit for discharge and fit for trial. Before issuing such an opinion, the Magistrate has committed sessions. However, there is nothing on record to show that after the report submitted by the Superintendent of Regional Mental Hospital at Yerwada, Pune dated 02.12.2021, the procedure as laid down under Section 332 has been followed. Be that as it may, the question is whether he can be released on sufficient security after the accused becomes capable of making his defence.

16. Considering the provisions as described above, as soon as the Magistrate believed that the accused was of unsound mind and consequently incapable of making his defence, he should have been released on sufficient security as provided under Section 330. However, instead of doing so, he was referred to the hospital through jail authorities. He is treated there and found fit for trial. Now the applicant has no evidence or material to believe that he is not capable of making his defence. Therefore, he cannot claim the benefit of Section 330 of Code of Criminal Procedure, and if the accused is produced before the Sessions Court for trial and the Sessions Court believe that still, the applicant-accused is not capable of making his defence by reasons of unsoundness of mind or mental retardation, he can be dealt with as provided under Section 330 of the Code of

Criminal Procedure. Since the applicant is capable of making his defence, he would be dealt with as provided under Section 333 of the Code of Criminal Procedure.

17. Section 330 is explicit that the Court or Magistrate has the discretion either to take bail or security of proper care of the mentally ill person on the satisfaction that he/she shall not cause harm or injury to himself or the other person. If no such bail is taken and the security furnished, the Magistrate or Court shall take his/her care by detaining such person in safe custody in such place. The Magistrate or the Court, as the case may be, shall report to the State Government. In other words, the provision does not provide for the mandatory release of such a person. The procedure has been discussed above, how to deal with such a person after he becomes capable of making his defence.

18. For the reasons stated above, this Court does not find the force in the arguments of the learned counsel for the applicant that the Court must have released the applicant. Therefore, the application stands dismissed.

(S.G. MEHARE, J.)