

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

BAIL APPLICATION NO.678 OF 2022

Babasaheb s/o Sambhaji Kshirsagar ... APPLICANT

VERSUS

The State of Maharashtra ... RESPONDENT

.....
Mr. N.B. Narwade, Advocate for applicant
Mr. D.R. Kale, A.P.P. for the respondent – State
.....

WITH

BAIL APPLICATION NO.685 OF 2022

Balkrushna Walmik Awhad ... APPLICANT

VERSUS

The State of Maharashtra & anr. ... RESPONDENTS

.....
Ms Pradnya S. Talekar, Advocate for Talekar & Associates
for applicant
Mr. D.R. Kale, A.P.P. for the respondents
.....

CORAM : R. G. AVACHAT, J.

Date of reserving order : 15th July, 2022

Date of pronouncing order : 18th July, 2022

ORDER :

Both these Bail Applications, under Section 439 of the Code of Criminal Procedure are taken up together since they are arising from one and the same crime. The applicants

have been behind the bars in connection with Crime No.0902/2021, registered at Newasa Police Station, District Ahmednagar for the offences punishable under Sections 166, 166-A, 167, 196, 201, 202, 203, 406, 418, 467, 468, 471, 120-B, 209, 420, 511 read with Section 34 of the Indian Penal Code.

2. Facts in brief, giving rise to the present applications are as under :-

There was a Criminal P.I.L. (Suo Motu Petition) No.3/2020 before the High Court of Judicature at Bombay, Bench at Aurangabad. An order was passed therein, directing investigation of a crime bearing No.827/2020 registered with Kopargaon Police Station for the offences punishable under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code. The Inspector General of Police (Maharashtra) therefore, constituted a Special Investigation Team (SIT). The crime came to be investigated by Deputy Superintendent of Police, State Crime Investigation Department (CID), Ahmednagar region. There were 10 doubtful Motor Accident Claim Petitions. One of such petitions bearing No.23/2020 was the subject matter of investigation. It was a Crime No.771/2019. registered with Newasa Police Station for the

offences punishable under Sections 304-A, 337, 338, 427, 279, 184 of the Indian Penal Code.

3. It was a case of accident between two motor vehicles namely a tractor and a motorcycle, that took place on Newasa-Shevgaon Road, Near Belhekar College on 23/12/2019 at 8.00 p.m. The motorcyclist, Murlidhar Kshirsagar passed away. There was a Whatsapp group "Sandeep Bhau Talpe Mitra Mandal". Photographs of the said accident were made viral on the Whatsapp of the group members. It was evident from the said photographs that it was an accident between Swaraj Tractor No.MH-41/AL-7171 and the motorcycle. Those photographs had also been received by an agent of Go-Digit General Insurance Company.

4. It is the case of the prosecution that, the tractor involved in the accident had not been registered with Regional Transport Office. It did not have an insurance cover. In the papers relating to the accident that came into being, it was shown to be an accident between a tractor No.MH-42/F-3904 and the motorcycle. It was so done only with a view to get compensation. Babasaheb Kshirsagar (applicant in Bail Application No.678/2022) had lodged the report with the concerned Police Station, stating therein that it was an

accident between the tractor No.MH-42/F-3904 and the motorcycle No.MH-17/AX-8464 when in fact these vehicles were not involved in the accident. The Police Naik who was entrusted with the investigation of the said crime, prepared false and fabricated papers. He prepared scene of accident panchanama at the police station itself. The legal representatives of the deceased had preferred Motor Accident Claim Petition No.23/2020 in the Court of District Judge, Shrirampur for compensation.

5. During investigation made by the SIT, everything has come on record. The applicants and the absconding accused were found to have had conspired together to commit the offences in question. The charge sheet, therefore, came to be preferred against the applicants herein.

6. Heard. Learned counsel for the applicant in Bail Application No.685/2022 would submit that, the applicant did not have any motive to get involved in the crime in question. He was a driver of the vehicle. The photographs of the accident were not clearly visible. The photographs were said to have been made viral from a cell phone of VIVO Company while the photographs indicate to be from cell phone of Honor Company. According to the learned counsel, the investigation

of the crime was over. Charge sheet has been filed. It is a principle of bail and not jail. Pre-trial detention of the applicant is unwarranted.

7. Learned counsel for the applicant in Bail Application No.678/2022 would submit that, the applicant is no way concerned with the crime in question. It was the brother-in-law of the deceased (brother of widow of the deceased) involved in the alleged crime. To point out the same, a scene of offence panchanama was brought to the notice of this Court to submit that the brother-in-law is one of the witnesses thereto. The learned counsel made submissions consistent with the submissions by learned counsel Ms Talekar.

8. The learned A.P.P. would, on the other hand, submit it to be a case of serious offence. Some of the accused are still absconding. He, therefore, urged for passing necessary orders.

9. Considered the submissions advanced. Perused all the papers of investigation so far made. True, the investigation of the crime is said to have been complete at least as against the applicants herein. The offences are

serious one. This Court is of the view that the applicants do not deserve to be enlarged on bail so immediately.

10. The applicant Babasaheb is brother of the deceased. It is he who has lodged the report of the accident at first instance. According to him, it was an accident between the tractor bearing No.MH-41/AL-7171 and the motorcycle. Based on the said report, the Police Naik (absconding accused) made investigation of the crime registered pursuant to the report lodged by the applicant Babasaheb. He prepared the false police papers. The scene of accident panchanama was drawn at the police station itself. The widow, mother and minor child of the deceased preferred Motor Accident Claim Petition No.23/2020 for compensation. On having realised the crime being investigated by the SIT, the claim petition came to be withdrawn unconditionally. The agent of Go-Digit Insurance Company has placed before the investigating officer 7 photographs of the accident wherein involvement of the vehicle namely tractor bearing No.MH-41/AL-7171 is appearing. On investigation, it was found that the said number was of the motorcycle belonging to one of the brother of the tractor owner. Since the tractor involved in the accident had not been registered with the R.T.O., the said

tractor was being operated displaying on it a number plate of a motorcycle. There is evidence in that regard in the nature of communication made by R.T.O. There are also statements of eye witnesses of the accident. As per their statements, it was an accident between the tractor bearing No.MH-41/AL-7171. They have also stated in their statements that, one Kailas Chavan was driving the said tractor. He (Kailas) ran away from the spot soon after the accident as he apprehended that the villagers may assault him. On the same line there is statement of another witness.

11. The applicant Balkrushna, brother of owner of the tractor involved in the accident came forward contending that he was driving the tractor. His motorcycle was shown to have been involved in the accident. The communication made by the concerned sugar factory indicates that the tractor bearing No.MH-42/F-3904 was in fact engaged in transporting sugarcane somewhere else by the time the accident took place.

12. In view of this Court, the involvement of both the applicants in serious crime is writ large. They have played with the judicial process. 2 – 3 accused persons are still at large (absconding). Although the investigation is complete, it

would not be desirable to grant the applicants bail so immediately. The Bail Applications, therefore, deserve to be rejected and the same are rejected.

13. The trial Court to explore possibility whether trial can be commenced against the present applicants. If the same could not be commenced within 8/10 months, applicants are at liberty move again, for bail.

**(R. G. AVACHAT)
JUDGE**

fmp/-