

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

**BAIL APPLICATION NO.1235 OF 2023
WITH APPLN/2982/2023**

Babu @ Baburao Gopal Kamble

...Applicant

VERSUS

The State of Maharashtra

...Respondent

...

Mr. G.R. Syed, Advocate for the applicant.

Mr. S.B. Narwade, APP for the respondent-State.

Mr. Avinash M. Reddy & Mr. Madhav Kalyane, Advocate for Assist to P.P.

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CORAM : S.G. MEHARE, J.

DATED : AUGUST 09, 2023

PER COURT:-

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for the victim.
2. The applicant seeks bail in Crime No.33 of 2022 registered with Udgir Rural Police Station, District Latur for the offences punishable under Sections 302, 307, 323, 324, 326, 341, 323, 504, 506, 143, 147, 148, 149 of the Indian Penal Code and Section 135 of the Maharashtra Police Act.
3. Previously, bail applications of the applicant on merit were declined by this Court. Thereafter, time to time the applicant approached this Court for bail on his health ground. Considering his health, temporary bail were granted to him. Initially, he was suffering

from hernia. However, at the time of treating him for hernia, it was discovered that he was also suffering from renal cell carcinoma, pT1bNxM0. Therefore, immediately he was operated and his left side kidney was removed. Since then, he was under continuous medical treatment. Recently, he has surrendered to the Court and again sent to jail. The applicant had moved an application before the learned Additional Sessions Judge for the bail. However, the learned Additional Sessions Judge rejected the bail application.

4. Learned counsel for the applicant would submit that the applicant is now around seventy four. He is suffering from various serious ailments. Since his kidney has been removed, he needs utmost care that he shall not get infected. Since he is in jail, there is high risk of infection. His treating doctor has also scheduled the plan for further treatment as per the papers of the hospital. He would submit that the incident happened arising out of the property dispute. The civil litigations are going on. His ill-health is the ground for bail by way of change in circumstances. He would submit that on the similar fact, the Hon'ble Supreme Court in the case of Dr. P. Varavara Rao Vs. National Investigation Agency, 2022 (3) AIR Bom. R (Cri.) 677 has granted bail.

5. Per contra, learned counsel for the victim has strongly opposed the application. He would submit that the jail authority is taking due care of the health of the applicant. He has been admitted

to the hospital from time to time. He needs no any special treatment. He was the key person behind the incident. If he would be released on bail, other co-accused who have been granted bail may be instigated at his instance and another serious offence may happen. In a nutshell, his arguments reveal that the appellant was the person behind the crime and he may repeat the crime. He prayed to dismissed the application.

6. Medical papers placed on record undisputedly proves that the applicant is suffering from renal cell carcinoma. He has been operated and his left side kidney has been removed. The kidney patient has to protect himself from infection. A due care needs to be taken by such patients. Since he is behind bar, there appears substance in the arguments of the learned counsel for the applicant that there is a high risk of infection that may be caused to the accused in jail, the jail authority though desirous, is unable to provide the special space/room to the applicant to protect him from infection. The patients suffering from carcinoma and whose kidney has been removed lose their resistance. The papers also have been placed on record for further treatment. Otherwise the person suffering from carcinoma needs to have a long treatment even after the surgery. On the similar facts, the Hon'ble Supreme Court in the case of Dr. Varavara Rao (cited supra) has granted permanent bail. To avoid the high risk of infection to the applicant in the jail and need to have a

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long medical treatment, it would be appropriate to make a justice with the applicant by granting him bail on certain conditions. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Babu @ Baburao Gopal Kamble, be released on bail on executing P.B. and S.B. of Rs.50,000/- (Rupees fifty thousand) with one solvent surety in the like amount in connection with the above crime, on the conditions that he shall not tamper with the prosecution witnesses.
- (iii) The applicant shall maintain peace in his family and relatives.
- (iv) The applicant shall not involve in similar crime.
- (v) The applicant shall contest his civil suit peacefully without applying criminal force and assault to anybody.
- (vi) Criminal Application No.2982 of 2023 is allowed.

(S.G. MEHARE, J.)