



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

937 BAIL APPLICATION NO.1981 OF 2023

**BHUSHAN NIMBA PAGARE
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr.Y. B. Bolkar
APP for Respondents/State : Mr. A.S.Shinde
Advocate for Assist to APP : Mr. C.C. Deshpande

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CORAM : S.G. CHAPALGAONKAR, J.

DATE : 11.12.2023.

PER COURT :

1. The applicant seeks regular bail in connection with Crime No. 75 of 2018 registered with West Devur police station, District Dhule, for the offences punishable under sections 302, 307, 341, 120(B), 109, 143, 147, 148, 149 of the Indian Penal Code and Section 4/25 of the Arms Act and Section 37(1)(3) r/w 135 of the Bombay Police Act.

2. This is second application of the applicant for grant of bail in the subject crime. His earlier application vide Bail Application No. 899 of 2020 was withdrawn, when the Court

expressed its dis-inclination to grant any relief on 06.09.2021.

3. Mr. Bolkar, learned Advocate appearing for the applicant vehemently submits that the subject trial in Sessions Case No. 103 of 2018 is not proceeding with expected speed, although 27 witnesses have been examined till this date, the trial may take further period of at least one year looking to the manner in which the prosecution is conducted the case. He would submits that the Hon'ble Supreme Court of India expedited the trial in this case and directed disposal within a period of six months vide order dated 12.09.2022 passed in Special Leave to Appeal (Criminal) No. 1166 of 2022, that was moved by accused Darshan Ambadas Pareshi. He would further submits that accused Bajirao @ Subhash Sajan Pawar has been recently released on bail by order of the Hon'ble Supreme Court of India dated 15.09.2023, observing that the applicant has been in custody for more than 5 years and the trial could not be completed within a specified period. He therefore, urged for released the applicant on bail by invoking the principles of parity.

4. Learned A.P.P., so also learned Advocate appearing for the complainant vehemently opposed the prayer for grant of bail. They would submit that as many as 27 witnesses have been examined by the State. The witness summons has been issued to the eye witnesses, who are expected to be examined on 21st of this month or within the recent future. They would submit that the release of applicant at this crucial stage may hamper progress of trial and possibility of intimidating the eye witnesses or tampering with the material evidence cannot be ruled out. They would submit that considering the role of the applicant in the commission of offences, the principles of parity cannot be invoked in his favour.

5. Having considered the submissions advanced, it appears that by order dated 21.09.2022 passed by the Hon'ble Supreme Court of India trial is expedited. It can also be observed that recently owing to delay in disposal of trial and consequential incarceration for more than 5 years the Hon'ble Supreme Court pleased to grant bail to accused Bajirao @ Subhash Sajan Pawar.

6. Perusal of the roznama in Sessions Case No. 103 of 2018 show that about 27 witnesses have been examined after the order of the Hon'ble Supreme Court of India. It is apparent that the accused as well as the prosecution both are responsible for delay in the trial. The instances can be seen that the trial is adjourned on the application submitted by the learned Advocate appearing for the accused. It is not the case that only the prosecution can be blamed for delay in the trial. Apparently the trial is at crucial stage and the evidence of the complainant/informant is recorded and now the witness summons are already issued to eye witnesses. This case is of a brutal double murder. This Court after considering the material available in the charge-sheet previously refused to exercise the discretion in favour of the applicant. So far as the accused who is released on bail by order of the Hon'ble Supreme Court of India dated 15.09.2023, it is specifically observed that accused Bajirao @ Subhash Sajan Pawar is aged about 75 years. It is therefore, clear that apart from the delay in trial, the advanced age of the accused person was taken as a basis for grant of bail. Present applicant is a young man of 30 years. He is identified by 3 eye witnesses being participant in the commission of the

offence. There is ample evidence to bring home his complexity in the commission of the offence. In view of the aforesaid observations the applicant cannot seek parity with accused who is released on bail. Hence no case is made out to show indulgence at this stage. In the result the application stands dismissed.

7. Since applicant suffered incarceration for more than 5 years, it is expected that the trial Court should endeavour to complete the trial at the earliest and conduct the same on day to day basis. Even the Division Bench of this Court has given the similar directions in Criminal Writ Petition No. 1569 of 2023 dated 27.09.2023.

8. Application for assist to learned APP is allowed.

(S.G. CHAPALGAONKAR)
JUDGE

mahajansb/