



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.577 OF 2024**

**GAURAV BAJIRAO PAWAR
VERSUS
THE STATE OF MAHARASHTRA**

...

Mr. A. K. Bhosle, Advocate for the Applicant.
Mr. A. S. Shinde, APP for Respondent-State.
Mr. C. C. Deshpande, Advocate for Assist to APP

...

**WITH
CRIMINAL APPLICATION NO.2383 OF 2024
IN
BAIL APPLICATION NO.577 OF 2024**

**PRASHANT S/O DAGAJIRAO PATIL
VERSUS
GAURAV BAJIRAO PAWAR AND ANR.**

...

Mr. C. C. Deshpande, Advocate for the Applicant.
Mr. A. S. Shinde, APP for Respondent-State.
Mr. A. K. Bhosle, Advocate for Respondent No.1.

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CORAM : S. G. CHAPALGAONKAR, J.

**RESERVED ON :- 14th JUNE 2024.
PRONOUNCED ON :- 26th JUNE 2024.**

ORDER:-

1. The applicant seeks regular bail in connection with Crime No.75 of 2018 registered with West Devur Police Station, District Dhule for the offenses 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. Previous Bail Application of the applicant was rejected by the Sessions Court vide order dated 06.08.2019 passed on Exhibit-4 in

Sessions Case No.103/2018. Thereafter, the applicant had approached this Court vide Bail Application No.25/2020, which was withdrawn on 06.09.2021 on disinclination expressed by this Court. As such, this is successive Bail Application on the ground that the trial is proceeding with snail's speed and applicant has suffered incarceration of more than 5 years till this date.

3. On 09.05.2024, the status report as regards to the trial as on 10.06.2024 was called from the Sessions Court. The report forwarded by the District Judge-4 and Additional Sessions Judge, Dhule indicates that as many as 29 witnesses have been already examined and cross-examination of PW-30-Dattatraya Angre (Nodal Officer) is in progress and prosecution as well as accused have tendered certain applications intercepting further examination of the witnesses. After giving details of the various pursis tendered by both sides, trial is estimated to last for eight to ten months. Mr Bhosle learned Advocate for applicant submits that no exception can be made to cardinal principal espoused by supreme court of India that indefinite incarceration of under-trial accused violates his Constitutional right guaranteed under Article 21 of the Constitution of India. In this case prosecution appears to have failed to conclude trial although same has been expedited by the orders of this Court as well as the Apex Court since last six years.

4. By inviting attention of this Court to the order dated 15.09.2023 passed by the Supreme Court of India in SLP (Cri.) No.4893/2021 filed by Bajirao @ Subhash Sajan Pawar, Mr Bhosle learned Advocate for accused submits that because of unreasonable delay in trial, co-accused in this case is already released on bail. Similarly, the another accused Darshan Ambadas Pardeshi had

moved application for bail before Supreme court vide Special Leave to Appeal (Cri.) No(s).1166/2022, which has been disposed of vide order dated 12.09.2022 granting him liberty to move for bail, if trial could not conclude within a period of six months. He points out that in various proceedings directions are given by this Court to conclude the pending trial at the earliest, since accused persons have suffered incarceration for more than five years. He urges to release applicant on bail.

5. Mr. Bhosle, learned Advocate appearing for the applicant relies upon the judgment of this Court in case of ***Akash Satish Chandalia Vs. The State of Maharashtra in Bail Application No.1779/2023*** dated **26.09.2023**.

6. Per contra Mr. Shinde, learned APP for the State and Mr. Deshpande, learned Advocate appearing for the complainant submits that prosecution alone cannot be blamed for delay in conducting the trial. The various applications have been moved from the side of the accused that hurdled the smooth progress of the trial. They would submit that the sessions case pertains to the serious offence of double murder. The applicant-accused played the crucial role in commission of the offence. He has been identified by the eye witness during the course of trial while holding deadly weapon in his hand and depicting his complicity in the crime since inception of the incident.

7. I have considered the submissions advanced by the learned Advocates appearing for the respective parties. The role of the applicant is stipulated in the FIR itself. His presence on the spot alongwith co-accused is indicated in the statement of witnesses. The FIR stipulates that the applicant was holding a sword. The

evidence of the witnesses examined during the course of trial also depicts serious attributions against the applicant. The statement of witness Prashant Dagajirao Patil (PW-27) recorded at Exhibit-587 in Sessions Case No.103/2018 refers to the role of the applicant in commission of the crime. Similar is the case with the evidence of other witnesses examined at the trial.

8. Undoubtedly the veracity of such material will have to be examined by Trial Court and no inference can be drawn at this premature stage regarding assertions against the applicant. However, the fact remains that the trial is in midway and sailing through a crucial stage. Some more eye witnesses are proposed to be examined. The witnesses on material aspects are yet to enter the witness box. Therefore, although the period of incarceration of the applicant is exponential, it is not the appropriate stage to release him on bail, since, the adverse impact on fair trial cannot be ruled out. Consequently, no case is made out for grant of bail. Hence, Bail Application stands dismissed.

9. In view of dismissal of the Bail Application, Criminal Application No. 2383/2024 also stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE