



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.1018 OF 2024**

Rahul Punjaram Sonawane
Age: 29 years, Occ: Agril,
R/o: Deshshirwade,
Tal. Sakri, Dist. Dhule.

..Applicant

Versus

The State of Maharashtra,
At the instance of Pimpalner
Police Station, Dhule

..Respondent

...

**WITH
CRIMINAL APPLICATION NO.3013 OF 2024
IN
BAIL APPLICATION NO.1018 OF 2024**

Harshal Narendra Mahajan,
Age: 24 years, Occu. Labour,
R/o. Deshshirwade, Tq. Sakri, Dist. Dhule

..Applicant

Versus

1. Rahul Punjaram Sonawane
Age: 29 years, Occ: Agril,
R/o: Deshshirwade,
Tal. Sakri, Dist. Dhule.

2. The State of Maharashtra,
At the instance of Pimpalner
Police Station, Dhule

..Respondents

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Mr. A. K. Bhosle, Advocate for the Applicant.
Mr. D. B. Bhange, APP for Respondent-State.
Mr. P. C. Mayure, Advocate for Assist to APP.

...
AND

BAIL APPLICATION NO.1987 OF 2024

Vishal S/o. Devidas Sonawane
Age: 26 years, Occ: Agriculture,
R/o: Deshshirwade, Tal. Sakri,
Dist. Dhule.

..Applicant

Versus

The State of Maharashtra

..Respondent

...

**WITH
CRIMINAL APPLICATION NO.4714 OF 2024
IN
BAIL APPLICATION NO.1987 OF 2024**

Harshal Narendra Mahajan,

Age: 25 years, Occu. Labour,

R/o. Deshshirwade, Tq. Sakri, Dist. Dhule

..Applicant

Versus

1. The State of Maharashtra,
through the Investigating Officer
Pimplaner Police Station, Tq. Sakri,
Dist. Dhule.

2. Vishal S/o. Devidas Sonawane
Age: 26 years, Occ: Agriculture,
R/o: Deshshirwade, Tal. Sakri,
Dist. Dhule.

..Respondents

...

Mr. R. M. Deshmukh, Advocate for the Applicant.

Mr. V. S. Badakh, APP for Respondent-State.

Mr. H. P. Randhir, Advocate for Assist to APP.

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CORAM : S. G. CHAPALGAONKAR, J.

Reserved On : 13th DECEMBER, 2024.

Pronounced On : 18th DECEMBER 2024.

ORDER:-

1. These are successive bail applications of the applicants for grant of regular bail in connection with Crime No.0039/2021 (Sessions Case No.103/2021) registered with Pimplaner Police Station, Dist. Dhule for the offences punishable under Sections 302, 307, 324, 143, 147, 148, 149 of the Indian Penal Code and Section 135 of the Bombay Police Act and Section 51(B) of the National Disaster Management Act.

2. Heard Mr. Bhosle and Mr. Deshmukh, learned Advocates appearing for the applicants in respective bail applications, Mr. Bhange, learned APP appearing for the respondent-State and Mr. Mayure and Mr. Randhir, learned Advocate appearing for complainant in respective applications.

3. The investigation was set in motion on the basis of information given by Mr. Harshal Mahajan alleging that he runs a pan shop in the vicinity of Bus Stand of village Deshshirwade. However, accused Rahul was raising quarrel with him and threatening to remove pan shop. Previously, complaint was lodged to police station in respect of quarrel between informant and accused. The maternal uncle of the informant namely Devendra Sawale had mediated and settled the dispute. Still accused Rahul was persistent in his activity and raising quarrel with informant.

4. On 08.04.2021, accused Rahul and Vishal had tilted and caused damage to informant's pan shop. When informant informed maternal uncle about the incident through phone call, he told him that he will come and speak to Rahul's father and explain the situation. Thereafter at about 07.30 pm informant and his maternal uncle were interacting with each other, at the same time accused Rahul and Vishal alongwith co-accused persons rushed to the spot. They were holding wooden log and sticks. They attacked maternal uncle of the informant i.e. Devendra Sawale. The Rahul and Vishal hit wooden log over the head of Devendra Sawale. He suffered bleeding injury and collapsed. The other accused persons also attacked and assaulted Devendra using sticks in their hands. The Devendra succumbed to the injuries. The postmortem depicts three head injuries to the deceased. The cause of death is mentioned as head injury and first three injuries shown in column

no.17 with internal column no.19 was found sufficient in ordinary course of nature to cause death. During the course of investigation, statements of witnesses have been recorded. There are as many as four eye witnesses. The first informant and his sister Pallavi are injured eye witnesses. Their statements are consistent. Consequently, previous bail applications moved by the applicants were rejected.

5. The learned Advocates appearing for the applicants restricted their submissions on the point that applicants have been arrested on 09.04.2021. Till this date trial is not commenced. They are behind bar for more than three and half years. There are no criminal antecedents. The co-accused persons have been released on bail. The Hon'ble Supreme Court of India granted bail to co-accused Punjaram Bhanudas Sonawane vide order dated 17.05.2023. The role of the applicants and accused, who are already enlarged on bail are identical. Therefore, on the ground of parity, case of the applicants can be considered for grant of bail. In support of their contentions, they rely upon judgment of the Supreme Court of India in ***Criminal Appeal No.3173/2024 (Jalaluddin Khan Vs. Union of India)*** and ***Criminal Appeal No.2790/2024 (Shaikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh)*** to contend that indefinite incarceration of the accused is not permissible being violative of Constitutional right under Article 21.

6. Per contra, learned APP and learned Advocates appearing for the complainant vehemently opposed the prayer for grant of bail. They would submit that this is a case of brutal murder at public place. The applicants before this Court are main assailants. The statement of eye witnesses coupled with medical evidence

clinchingly points out guilt of the accused persons. The release of the applicants at this stage would create hurdle in smooth trial. The law laid down by Supreme Court of India in cited judgments would not apply in facts of the present cases.

7. Having considered submissions advanced, apparently previous bail applications of the applicants have been rejected on merit observing that there is sufficient material in the charge-sheet indicating their complicity in commission of offence. The present applications are pre-dominantly moved taking plea of parity and prolonged incarceration of the applicants. So far as ground of parity is concerned, while releasing co-accused Prakash and Devidas in Bail Application No.1104/2021, this Court observed that present applicants were main assailants and role of Prakash and Devidas was secondary. Similarly, accused Govinda and Uttam were released vide order dated 30.03.2022. The accused Punjaram Sonawane has been released by order dated 17.05.2023 passed by the Supreme Court of India observing that first three accused persons were aggressors. The role of the accused Punjaram is elaborated in supplementary statement. Further, his age was dominant factor for grant of bail. Therefore, even going by the observations of the Supreme Court of India, role of applicants in commission of offence is endorsed and benefit was given to co-accused Punjaram. Therefore, ground of parity is not available to the applicants.

8. Second contention that indefinite incarceration of the accused would not be permissible being inconsistent with the right of speedy trial guaranteed under Article 21 of the Constitution of India, there cannot be quarrel over the preposition of law espoused by Supreme Court. It is true that prosecution cannot prolong trial

and then opposes plea for bail. In case of ***Shaikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari*** (supra), Supreme Court observed that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted.

9. Apparently, aforesaid observations are in the wake of provisions under Unlawful Activities (Prevention) Act, 1967 (for short 'UAP Act'), which restricts grant of bail.

10. Similarly, in case of ***Jalaluddin Khan*** (supra) the Courts considered bail application of the accused charged for offences under UAP Act and granted bail holding that material in the charge-sheet is not sufficient to make out offence under UAP Act and, therefore, exercised constitutional powers to grant bail.

11. In present case, report from Sessions Court regarding progress of the trial was called. The learned Sessions Judge vide his report dated 11.12.2024 states that presently Sessions Court is busy in dealing with old MCOCA case of 2021 and special case of 1991 and as per directions given by Supreme Court of India, the cases older than five years are given priority. The charge in these cases would be framed after some days. It is true that till this date charge is not framed and applicants have suffered incarceration of

three and half years. However, that itself cannot be ground to release applicants on bail. It is not case where prosecution has failed in its duty to take requisite steps. As per direction of Supreme Court of India old under trial cases are given priority and soon present case would also be taken up for framing charge and further trial. The evidence on record clinchingly points out that applicants before this Court were responsible for death of victim. They gave fatal blows on the head of deceased. The incident has not occurred on spur of moment, but it was premeditated brutal attack. Apart from deceased, the informant and his sister have also suffered serious injuries. The role of the applicants is endorsed in the statement of the eye witnesses, which is duly corroborated by medical evidence. Hence, no case is made out for grant of bail.

12. Consequently, Bail Applications stand rejected.

13. Criminal Application Nos.3013/2024 and 4714/2024 for assist to APP are allowed and disposed of accordingly.

(S. G. CHAPALGAONKAR)
JUDGE