



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

BAIL APPLICATION NO. 1991 OF 2024

Sandeep Marotrao Shinde

VERSUS

The State Of Maharashtra

WITH BAIL APPLICATION NO. 1994 OF 2024

Marotrao Nagorao Shinde

VERSUS

The State Of Maharashtra

WITH

**CRIMINAL APPLICATION NO. 4787 OF 2024
IN BA/1991/2024**

WITH

**CRIMINAL APPLICATION NO. 4788 OF 2024
IN BA/1994/2024**

Mr. S. S. Thombre, Advocate for applicant

Mr. B. A. Shinde, APP for respondent/State

Mr. A. V. Indrale Patil, Advocate for the Informant

CORAM : R. M. JOSHI, J.

DATE : 20th DECEMBER, 2024

PER COURT :-

1. Mr. Indrale Patil, learned Counsel, seeks permission to assist APP. Having regard to the nature of offence, he is permitted to assist APP. Criminal Application Nos. 4787/2024 and 4788/2024 stand disposed of.

2. Applicants are seeking regular bail in connection with Crime No. 61/2023 registered with Manatha Police Station for the offences

punishable under Sections 302, 120-B, 324, 506 of the I.P.C.

3. First informant is the son of deceased Uttamrao Shinde. He reported incident occurred on 2nd June, 2023 early in the morning, when Uttamrao along with his wife went to the spot for morning walk. At that time, from Manatha Pati side, one white colour four wheeler bearing registration No. MH 26 BQ 7114 came and had passed by them. At a distance of about 100 meters, it turned back and dashed against the father of the informant from behind. In the said dash, father of the informant died on the spot whereas Damodar Ade who was also walking along with the deceased was injured. It is alleged in the First Information Report that owing to the dispute between deceased's family and family of applicants, the deceased was murdered by dashing a four wheeler against him. There is also a reference about conspiracy being hatched by applicants. It is a case of the informant that the conspiracy was hatched in the agricultural field of Ballal. On these allegations, First Information Report is lodged.

4. Learned counsel for the applicants submits that now investigation is over and charge-sheet is filed. It is his further submission that the only evidence as far as the conspiracy is concerned during the entire charge sheet is only in form of the statement of Pradeep Sambhaji Chabharkar. It is his submission that the statement is recorded on

28.06.2023 though the incident has occurred on 02.06.2023. According to him, undisputedly this witness has met informant on the date of the incident and in spite of the same, there is neither such disclosure to the informant about the incident now sought to be stated by him and on the contrary the First Information Report discloses about the conspiracy being hatched at the some other place and at some other point of time. It is his submission that witness though is related to informant as well as accused, he drew attention of the Court to the change report No. 8958/2018 which indicates that father of this witness was a committee member along with deceased. Thus, it is his submission that the witness belongs to the opposite group. It is his further argument that it can be said from the evidence on record that there are disputes between two groups in respect of the control over the Trust, educational institute. It is his submission that having regard to the fact that the witness is from the opposite group and that statement is recorded belatedly, there is reason to believe that he could be a got up witness.

5. Learned APP and learned counsel for the informant opposed the applications by contending that this is a case wherein the deceased was killed, pursuant to the conspiracy and there is evidence in the form of statement of this witness Pradeep to connect applicants with crime. He also drew attention of the Court to the statement of Eye Witness Damu

who has not only made statement with regard to the incident in question but has also stated the fact that applicant Marotrao who used to come along with his wife daily in the morning walk did not come for walk of 2 to 3 days nor he was present on the date of incident. According to them, this witness has also stated about the previous incident which he had witnessed in this school in connection with this accused. It is further argued by learned counsel for the informant that considering conduct of the present applicants, their case of grant of bail be not considered. Though their pre-arrest bail application was rejected on 08.08.2023, for over a period of a year they did not surrender to the police which shows their guilt. It is also brought to the notice of the Court that the co-accused - Suhas who was released on bail, there are reports lodged against him for threatening witness and informant. It is thus his submission that this is not a fit case for grant of bail as there is possibility of the applicants interfering in the evidence and pressurizing witnesses.

6. Learned APP has drawn attention of the Court that there are about 8 offences registered against both applicants. Thus, it is his contention that since the applicants have criminal history, they may not be released on bail. Learned counsel for the applicants makes statement that he himself appeared in the Anticipatory Bail Application in one of the

crimes being no. 140/2021, wherein the Anticipatory Bail was granted by the applicants by this Court. He further claims that all these offences registered against the applicants are out of the dispute over the control of the trust.

7. There is no dispute about the fact that investigation into the crime is over. As such, it is for this Court to consider the applications of the applicants for regular bail on the basis of material collected during the investigation. There is no dispute that except for the statement of Pradeep, there is no other evidence to prove conspiracy against the accused persons. The incident in question has occurred on 02.06.2023 whereas the statement of Pradeep is recorded on 28.06.2023. There is nothing on record to indicate that he was not available for recording of the statement. On the contrary, the statement shows that immediately after occurrence of the incident, he had met the informant.

8. Perusal of the First Information Report does not show any such disclosure being made by the Pradeep to the informant regarding the incident which now he states about it in his statement. On the contrary, the First Information Report shows that the conspiracy was hatched at the agricultural field of Ballal. *Prima facie* there is material inconsistency in the statement of this witness and First Information Report. One more aspect deserves consideration is the documentary

evidence which indicates at least *prima facie* that his father was from the group in the trust to the side of deceased Uttamrao. A statement made across the bar that now Pradeep himself is a trusty. To this submission, learned counsel for the informant states that Pradeep is not trustee of the trust. Leave apart the controversy as to whether the witness is trustee or not, there is material on record to indicate that his father was a managing trustee and was from the group of the deceased.

9. The law on reliability of belatedly recorded statement is fairly settled to say that unless explained, such statement needs to be considered with pinch of salt. The possibility of concoction creeps in once there is no explanation for not recording statement immediately, as happened in this case. In view of these circumstances and more particularly in view of the delay caused in recording the statement without any explanation thereto, this Court finds no reason to discard the contention of the learned counsel for the applicant that this witness could be a got up witness.

10. In so far as the contention of the learned counsel for the informant about the conduct of the applicants of not surrendering for the period of a year after rejection of Anticipatory Bail Application is concerned, merely because the applicants were successful in avoiding arrest, it is not permissible to presume that since they are guilty, they

avoided arrest.

11. Apart from this, it is submitted that only in August, 2024, they were taken in custody and as such, this is not the case for releasing them on bail immediately. This Court does not agree with the said contention of the counsel for the informant for the reason that now charge sheet is filed and the duration of the custody itself cannot become sole ground for allowing or rejection of bail. The Court is required to consider over all circumstances appearing from record. This Court prima facie finds substance in the contention of the counsel for the applicant about there could be serious doubt about the reliability of the statement of witness Pradeep and in absence of any other evidence to connect applicant with crime, bail application cannot be rejected. Similarly, absence of applicant Marotrao and his wife for morning walk on date of incident is not sufficient to consider his involvement in crime. To do so, would be nothing more than speculation, which is impermissible in law.

12. One more aspect needs to be considered is about the allegations against the co-accused Suhas who was granted regular bail by this Court. It is alleged against him that after his release, he has threatened to the informant as well as to the witnesses. Though, NCRs are placed on record to support the said submission, however, there is no application moved by the prosecution for cancellation of his bail. In any

case, the acts alleged against the co-accused committed by him after he is released on bail cannot be attributed to the present applicants. However, having regard to the seriousness of the crime and to ruled out the possibility of any interference of the applicants in the evidence, applicants are hereby prevented from entering into the jurisdiction of Manatha Police Station till conclusion of trial . It is clarified that any breach of this condition or any other condition would lead to the cancellation of their bail.

13. Needless to say that above observations are made only for the purpose of decision of these applications for grant of bail and neither the trial Court nor any other Court would be bound by the same. Hence, the order:

O R D E R

(i) Both applications are allowed.

(ii) Applicants in connection with Crime No. 61/2023 registered with Manatha Police Station, District Nanded for the offences punishable under Sections 302, 120-B, 324, 506 of the I.P.C., they shall be released on bail on furnishing PB and SB of Rs.25,000/- (Rupees Twenty Five Thousand only) each with one solvent surety in the like amount each.

(iii) Applicants are hereby prevented from entering into the jurisdiction of Manatha Police Station till conclusion of

trial.

(iv) They shall not contact the witnesses directly or indirectly.

(R. M. JOSHI, J.)

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