

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 596 OF 2024

Yogesh Balkrushna Bhilare

...Applicant

Versus

State Of Maharashtra

...Respondent

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Mr. Rahul K. Dhaigude a/w Mr. Dipak Jadhav, Advocate for the Applicant.

Ms. K. T. Hivrale, APP for the Respondent – State.

Mr. Shailesh Chavan a/w Mr. Nagesh Khedkar, Advocate for Intervenor.
Head Constable, D.D. Gaikwad, Satara Taluka Police Station.

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CORAM : PRAKASH D. NAIK, J.

DATE : 28th MARCH, 2024.

P.C.:

1. The Applicant is seeking bail in C.R. No. 393 of 2018 registered with Satara Taluka Police Station for the offence under Sections 302, 364, 201 r/w 34 of Indian Penal Code (for short 'IPC').

2. The case of the prosecution is that deceased Amit Bhosale and the Applicant were close friends. The first informant is the brother of the deceased. According to him, in May 2018 the deceased had informed him that the Applicant suspects that he is in illicit relation with his wife. The Applicant had assaulted him. In

June 2018 Amit Bhosale had called complainant and informed him that the Applicant told him that they should go out together to clear suspicion from the mind of people about his relationship with Applicant's wife. While they were proceeding on motorcycle, Applicant had tried to kick him in front of truck. On 1st August, 2018 the complainant received a call that Amit Bhosale that he had met with an accident. On inquiry, it was learnt that on 31st July, 2018 at about 8:30 p.m. the Applicant and his wife had visited study center where the deceased was preparing for competitive examination and the deceased had left with them. CCTV footage from the study center was verified and it was found that the Applicant and his wife were seen, leaving together with deceased on motorcycle. Although, the Applicant was close friend of the deceased, he did not attend his funeral. There were injuries on the head of the deceased.

3. The first application for bail preferred before this Court was rejected vide Order dated 5th August, 2021. Subsequently, another application viz. Bail Application No.1075 of 2023 was preferred before this Court. It was rejected vide Order dated 4th May, 2023. The trial was expedited. Liberty was granted to the Applicant to file fresh application for bail in the event, the trial is

not concluded within a period of six months.

4. Learned Advocate for the Applicant submitted that the Applicant is in custody from 5th August, 2018. He is in long incarceration of five years and seven months. The entire case is based on circumstantial evidence. There is no eye witness to the incident. Liberty was granted to the Applicant to file fresh application for bail in the event, the trial is not concluded within period of six months. The period of 11 months have passed after trial was expedited. The prosecution has so far examined four witnesses. Several other witnesses are yet to be examined. The prosecution was relying upon the circumstance of last seen together. The prosecution has examined Bapuji Sahebrao Kadam to establish the circumstance of last seen together against the Applicant. However, he has not supported the prosecution case. The prosecution was also relying upon the circumstance of extra judicial confession made by the Applicant to Shri. Dattatray Jadhav. He has been examined. He has not supported the prosecution case. The prosecution has also examined Balkrushna Bhilare on the point of use of mobile hand set to establish the evidence of CDR. He is declared hostile. The Applicant has not delayed the trial. The delay is by prosecution. The Applicant cannot be incarcerated in custody

for indefinite period. NBW was required to be issued against PW-1. The trial is proceedings in slow pace.

5. Learned APP submitted that the trial has commenced the prosecution has examined four witnesses. Amongst the remaining witnesses there are about 19 Panch witnesses. Non-cognizable complaint was registered at the instance of complainant. Trial would be concluded shortly.

6. Learned Advocate for complainant submitted that the previous application for bail preferred by Applicant was rejected. Pursuant to the order expediting the trial, the prosecution has examined four witnesses. The offences is of serious nature. There are strong circumstances against the Applicant. The hostile witnesses were cross-examined by the prosecution which indicate the reason for not supporting. There is strong evidence of CCTV footage recovered during the investigation which refers to the presence of the Applicant and the co-accused near the gate of the college. The trial may be expedited. It would be concluded shortly.

7. There are three accused involved in this case. The other accused are on bail. The Applicant is in custody for a period about five years and seven months. While rejecting the second application the trial was expedited and liberty was granted to the Applicant to

prefer fresh application for bail in the event, the trial is not concluded within six months. Period of 11 months have passed is not disputed that the case is based on circumstantial evidence. The crucial witness in view of last seen together and extra judicial confession have not supported the prosecution. While rejecting the previous application for bail, this Court had taken to consideration the aforesaid circumstances. The prosecution is relying upon the evidence of CCTV footage, indicating presence of Applicant and the other accused near the gate of college where the victim was allegedly studying. The co-accused is on bail. However, it is not disputed that there is no eye witness to the incident and the case is based on circumstantial evidence. There is nothing to indicate that the Applicant had delayed the trial. He is in custody for substantial period of time.

8. Considering these circumstances, bail can be granted on certain terms and conditions.

ORDER

- i. Criminal Bail Application No.596 of 2024 is allowed;
- ii. The Applicant is directed to be released on bail in connection with C.R. No.393 of 2018 registered with Satara Taluka Police Station on executing P.R. Bond in the sum of

Rs.50,000/- with one or more sureties in the like amount;

iii. The Applicant shall not reside within the jurisdiction of Satara City and Taluka, except for attending the Court proceedings.

iv. The Applicant shall not tamper with the evidence and shall cooperate with trial Court in concluding the trial.

v. Application stands disposed off.

(PRAKASH D. NAIK, J.)