

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

BAIL APPLICATION NO.832 OF 2024

Tanaji Baliram Bhosale

.Applicant

Versus

The State of Maharashtra

.Respondent

Mr. Vijay Killedar a/w. Mr. Sumedh Modak, for the Applicant.

Ms. S. S. Kaushik, APP, for the Respondent – State.

Mr. K. H. Jadhav, Police Naik, B.No.926, Mangalwedha Police Station, Solapur (Rural), present.

CORAM: MADHAV J. JAMDAR, J.

DATE: 14.03.2024

P. C.

1. Heard Mr. Killedar, learned Counsel for the Applicant and Ms. Kaushik, learned APP for the Respondent-State.

2. This is the second Bail Application.

3. I have passed the following order earlier on 14.03.2024

“1. After arguing for some time, when this Court was not inclined to grant bail to the Applicant, Mr. Killedar, learned counsel appearing for the Applicant seeks leave to withdraw the Bail Application with liberty to file a fresh Bail Application after a period of ten months, if the trial does not conclude within the said period.

2. The Bail Application is allowed to be withdrawn and disposed of as such with liberty as aforesaid.”

4. Later on, again, Mr. Killedar, learned Counsel for the Applicant, appeared and stated that there is some communication gap and the relatives of the Applicant said they had given instructions to withdraw the Bail Application without understanding. Therefore, he submitted that the Bail Application be decided on merits. Accordingly, I am recording the reasons for rejection of the Bail Application.

5. This second regular bail Application is preferred under Section

439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1.	C. R. No.	369 of 2019
2.	Date of registration of F.I.R.	08.08.2019
3.	Name of Police Station	Mangalwedha, Solapur (Rural)
4.	Sections invoked	302, 363, 364, 201 and 120-B of the I.P.C., 1860
5.	Date of incident	29.07.2019
6.	Date of arrest	19.08.2019
7.	Date of filing of Charge-sheet	04.11.2019

6. As per the prosecution case, the deceased was the husband of the co-Accused – Anita. It is alleged that Anita was in a relationship outside of marriage with the Applicant. The deceased went missing from Mangalwedha S.T. Stand on 29.07.2019 at about 4.00 pm. On 30.07.2019 at around 4.00 p.m., mortal remains of an unidentified person (subsequently identified as deceased-Santosh) were found. It is alleged that the Applicant alongwith other Accused hatched a conspiracy of murdering the deceased-Santosh. The Accused Nos.2, 3, & 4 kidnapped the deceased from Mangalwedha S.T. Stand and he was taken to a Hotel named ‘Shivneri’ where he was made to consume liquor and was then shown a video of the said relationship between the Applicant and the co-Accused – Anita (wife of the deceased). Thereafter, the deceased was taken in a Mahindra Xylo car and was thrown in a quarry in Bijapur.

7. Mr. Killedar, learned Counsel for the Applicant submitted that except for the present Applicant, all other Accused have been enlarged on bail. Therefore, the present Applicant may be granted bail on the ground of parity. He submitted that the role attributed to the present Applicant is similar to that of the Accused Nos.2 to 4 who are already enlarged on bail.

8. He submitted that the present Applicant was alleged to be seen

with the deceased at 12.00 noon whereas Accused Nos.2 to 4 were last seen together with the deceased at 4.00 p.m. after which he was alleged to have been taken to Bijapur. Thus, the complicity of other Accused persons in commission of the offence in question appears to be greater than that of the present Applicant and despite the same, all other Accused persons have been enlarged on bail. Therefore, rule of parity applies to the present case. He submitted that the Supreme Court while dismissing the Special Leave to Appeal (Cri.) No.1916 of 2022 by Order dated 14.12.2022 on account of lengthy incarceration, granted liberty to the Applicant to renew his prayer for grant of bail before the Trial Court after the material witnesses are examined and if the trial is not completed within one year from the date of order. He submitted that the record indicates that there were as many as 50 witnesses (Page No.32) out of which only 4 – 5 witnesses have been examined till date and the trial does not appear to conclude in the near future. Out of the 50 witnesses, only 17 are material witnesses as held by the learned Sessions Court in its order rejecting Bail Application of the Applicant. He submitted that the Applicant is incarcerated since almost 4.5 years i.e. since the date of his arrest i.e. 19.08.2019.

9. On the other hand, Ms. Kaushik, learned APP for the Respondent – State vehemently opposed the Bail Application. She submitted that parity is not applicable to the present case as the Supreme Court has rejected the Bail Application by Order dated 14.12.2022 and the parity which the Applicant is seeking is on the basis of the Orders dated 13.09.2021 and 11.12.2021. She submitted that the Order granting bail to the Accused No.3 is 13.09.2021 and the Order granting bail to the Accused Nos.2 to 4 is 11.12.2021. She submitted that there is a clear role of the Applicant in the commission of the offences. She pointed out a detailed order passed by the learned Sessions Judge and submitted that the material witnesses are

yet to be examined. She therefore prayed that the Bail Application be rejected.

10. A learned Single Judge of this Court [C.V. Bhadang, J.] by Order dated 04.12.2020 had rejected the first Bail Application of the Applicant – Tanaji Baliram Bhosale passed in Cri. B.A. (St.) No.2681 of 2020. The elaborate reasons are recorded in paragraph Nos.9 and 10 of the aforesaid order which read as under:-

“9. I have carefully considered the circumstances and the submissions made. It is true that the case is based on circumstantial evidence. However, it is necessary to look into the circumstances as pointed out. At this stage, the material need to be examined only to see whether prima facie case is made out or not. It appears that during the course of the investigation, CCTV footage at ST stand Mangalwedha is recovered which shows that the deceased was in the company of the applicants. The persons which are shown to be accompanying the deceased have been identified to be the applicants. Prima facie, it appears that at the relevant time the location of the applicants Tanaji Bhosale and Rushikesh @ Dada Gaikwad was shown at the ST stand and other two persons were also shown to be in contact with each other and their location was found to be together. It was also disclosed during the investigation that Tanaji Bhosale was in contact with Anita Shinde. Thus, at this stage, there is prima facie material to show that the deceased was last seen together with the applicants on 29.07.2019 after which he was found dead on the following day. There is statement of Rahul Phalke, who is a waiter at hotel Shivneri. His statement prima facie indicates that the applicants had taken the deceased to the said hotel where the deceased was shown some video clip (which according to the prosecution is in respect of illicit relations between accused Tanaji Bhosale and Anita Shinde) and was made to drink liquor after which he was taken in a Xylo car. As noticed earlier, on the subsequent day, Santosh Shinde was found dead in a quarry at Bijapur.

10. After having gone through the entire material, in my considered opinion there is a prima facie case made out showing the complicity of the applicants in the alleged crime. The offence is serious, inviting the minimum punishment of imprisonment of life. In that view of the matter, I do not find that a case for grant of bail is made

out.”

11. The said order is confirmed by the Supreme Court by Order dated 14.12.2022 passed in Special Leave to Appeal (Cri.) No.1916 of 2022. However, liberty has been granted to the Applicant to renew his request for bail after material witnesses are examined and if the trial is not concluded within one year. The learned trial Court after recording reasons has held that the evidence of the material witnesses is not yet completed.

12. Ms. Kaushik, learned APP for the Respondent – State, on instructions, submitted that five witnesses are already examined and the trial will be completed within ten months.

13. Prima facie, the factual position on record shows that the Applicant No.3 is involved in the offence in question and that the same is a premeditated crime. Accordingly, no case is made out for grant of bail to the Applicant.

14. However, the Applicant is granted liberty to prefer a fresh Bail Application after a period of 10 months if the trial does not conclude by then.

15. The Bail Application stands rejected with liberty as aforesaid.

[MADHAV J. JAMDAR, J.]