

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.4776 OF 2024

Mahesh Maruti Kamble	...Applicant
<i>Versus</i>	
The State of Maharashtra	...Respondent

Mr. Kedar J. Patil i/b. Mr. Pratik G. Tare and Ms. Sakshi S. Kadam,
Advocates, for the Applicant.
Ms. Poonam P. Bhosale, APP, for the Respondent-State.
Mr. Shrikant D. Waghmare, PSI, Ichalkaranji Police Station,
Kolhapur, present.

CORAM: MADHAV J. JAMDAR, J.
DATED : 18th DECEMBER 2024

PC:-

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

2. This 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.	4 of 2023
2.	Date of registration of F.I.R.	3 rd January 2023
3.	Name of Police Station	Ichalkaranji Police Station,

		Dist. Kolhapur.
4.	Section/s invoked	307, 452, 147, 148, 149, 427, 323 & 506 of the Indian Penal Code, 1860(“ IPC ”).
5.	Section/s invoked in Charge-sheet	302, 307, 452, 147, 148, 149, 427, 323 & 506 of the I.P.C.
6.	Date of incident	2 nd January 2023
7.	Date of arrest	5 th January 2023
8.	Date of filing of Charge-sheet	2 nd April 2023

3. At the outset, Mr. Patil, learned Counsel appearing for the Applicant submits that there are total 9 Accused. He submits that the present Applicant is Accused No.3 and except the present Applicant, all co-Accused have been released on bail. He submits that Accused No.1-Sandeep Dattatraya Kamble has been granted bail by this Court by the order dated 17th December 2024 passed in Criminal Bail Application No.2327 of 2024. He submits that Accused No.2-Pradip Dattatraya Kamle has been granted bail by this Court by the order dated 17th December 2024 passed in Criminal Bail Application No.5114 of 2024. He submits that other co-Accused have been granted bail by the learned Trial Court. He submitted that the Applicant is entitled to be released on bail on the ground of parity. He thus, submits that except the present

Applicant, all Accused have been released on bail. He submits that incident in question took place on the spur of the moment due to sudden fight. He submits that there is no progress in the trial and even the charge is also not framed.

4. On the other hand, Ms. Bhosale, learned APP strongly opposes the Bail Application. She points out the Roznamas of certain dates including 19th August 2024 and 21st August 2024. She submits that the request was made by the Applicant not to frame the charge on those dates as this Bail Application is pending in the High Court. She also points out the statement recorded under Section 164 of the Code of Criminal Procedure, 1973. She submits that there are eye-witnesses to the incident in question and as the Applicant is involved in a very serious offence, the Bail Application be rejected.

5. The present Applicant is the Accused No.3. The Respondent – State of Maharashtra has opposed the Bail Application of the Accused No.2 being Bail Application No.5114 of 2024 by filing Affidavit dated 17th December 2024 of Shrikant Digambar Waghmare, Police Sub Inspector, presently attached to Ichalkaranji

Police Station, District – Kolhapur. The prosecution case is set out in Paragraph No.3 of the said Affidavit dated 17th December 2024, which reads as under:-

“3. I say that the prosecution case in brief is as under :-

(a) That the Informant namely Mrs. Santoshidevi Rajeshkumar Joshi lodged report with Ichalkaranji Police Station, Kolhapur inter alia stating therein that she and her husband Rajeshkumar Joshi were residing in given address. She has two sons. Her son Mahesh is doing job at Mumbai and the younger son Pankaj is working and staying in Polland country. Her daughter Naina is married and she resides at her matrimonial home at Mumbai. She and her husband were residing in the house. (b) It is the case of the informant that the ground floor was given on rent to one Suresh Prajapati. Accused wanted to grab their house. Accused reside in front of her house.

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(c) It is the case of the informant that on 02/01/2023 at about 10 p.m. after dinner complainant and her husband were chitchatting. At about 10.05 p.m. accused Sandip called complainant's husband and therefore he went in the open place in front of their house. It is further case of the informant that at that time accused Sandip told to her husband that the behavior of his tenant is not good and asked them to vacate the room. At

that time Rajeshkumar told accused that he will ask his tenant to vacate the house within a week.

(d) It is the case of the informant that thereafter Rajeshkumar came to his house. Thereafter accused Sandip, Pradip, Mahesh and their wives and their mother Balabai came there. Other two women relatives were also present Accused were saying her husband to ask their tenant to vacate the room immediately. Thereafter all accused dragged to the husband of complainant from the staircase. Accused Sandip uttered "आत्ताच्या आता घर खाली करण्यास का सांगत नाहीस, तुम्हाला आता जिवंत सोडायचे नाही, या दोघांना मारून टाकू". It is further case of the informant that Accused Sandip took out one marble floor piece which was lying near electric water motor and assaulted on the head of Rajeshkumar. Due to this Rajeshkumar sustained head injury. At that time other accused were beating to Rajeshkumar by kicks and blows.

(e) It is the case of the informant that thereafter Rajeshkumar was admitted in the hospital. Initially offence under Section 307 of I.P.C. was registered against the accused. During treatment on 05/01/2023 Rajeshkumar expired.

(f) It is the case of the informant that Supplementary statement of the complainant was recorded and offence is converted into section 302 of Indian Penal Code.

(g) It is the case of the informant that on 02/01/2023 at around 10 PM at Complainants house 1) Sandip Dattatray Kamble, 2) Pradip Dattatray Kamble (Present Applicant/Accused hereinabove), 3) Mahesh Maruti Kamble, 4) Priya Sandeep Kamble, 5) Pramila Pradip Kamble, 6) Archana Mahesh Kamble, 7) Balabai Dattatray Kamble, 8)Shobha Sunil Kamble, 9) Jayashree

Pandurang Kamble and others two to three unknown people, holding the anger of the previous conflict in the mind, brutally assaulted complainant husband Rajkumar.

(h) On the basis of the complaint, offence vide C.R. No. 4 of 2023 came to be registered against the Applicant and other at Ichalkaranji Police Station Kolhapur for offence punishable U/s. 302, 307, 147, 148, 149, 427, 323, 506 of the Indian Penal Code and investigation was commenced.”

6. Perusal of the record shows that the incident in question took place on 2nd January 2023, FIR was lodged on 3rd January 2023 and the Applicant has been arrested on 5th January 2023. Till date, there is no progress in the trial and even the charge is also not framed. As per the prosecution case, about 42 witnesses are proposed to be examined by the prosecution. Thus, considerable time will be required for completion of the trial.

7. The contention of Ms. Bhosale, learned APP that the charge is not framed as the Applicant himself has requested not to frame the charge, is partially correct as the said request was made on 19th August 2024 and 21st August 2024.

8. Perusal of the Roznama produced by Mr. Patil, learned Counsel for the Applicant shows that the Applicant has not been produced before the learned Trial Court on several dates including on 4th March 2024, 6th March 2024, 16th March 2024, 20th March 2024, 30th March 2024, 6th April 2024, 16th April 2024, 22nd April 2024, 25th April 2024, 18th June 2024, 16th July 2024, 7th August 2024 etc.

9. Ms. Bhosale, learned APP has relied on the Roznama dated 19th August 2024 to contend that the Applicant himself has requested for not framing of the charge in view of the pendency of this Bail Application. However, it appears that the Roznamas recorded before 19th August 2024 show that on various dates the Applicant has not been produced before the learned Trial Court. Thus, the Applicant solely is not responsible for delay in trial.

10. *Prima facie*, it appears that the incident in question took place as there was certain dispute regarding the conduct of the tenant of the deceased. It is an admitted position that the Applicant is residing in the adjoining residential premises and therefore prima facie there is substance in the contention that the

quarrel between two neighbours had escalated further resulting into death of the deceased.

11. Speedy trial is one of the facets of right to life and liberty guaranteed under Article 21 of the Constitution of India. Speedy trial is an essential ingredient of “reasonable, fair and just” procedure guaranteed by Article 21 and it is the constitutional obligation of the State to devise such a procedure as would ensure speedy trial to the Accused.¹ Therefore, the Applicant is entitled for bail. If the Applicant’s detention is continues, it will amount to an infringement of his fundamental right under Article 21 of the Constitution of India of speedy trial.

12. As per the Charge-sheet, there are 42 witnesses proposed to be examined by the prosecution. Thus, the trial will take a considerably long time to conclude. Accordingly, case is made out for grant of bail.

13. Ms. Bhosale, learned APP states that the Applicant has 1 antecedent i.e. C.R. No.1 of 2017 under Sections 323, 324, 427,

1 Hussainara Khatoon (IV) v. Home Secy., State of Bihar, (1980) 1 SCC 98

504 and 34 of the Indian Penal Code, 1860. However, Mr. Patil, learned Counsel for the Applicant states that the said antecedent is of the year 2017 and the Applicant has been acquitted in the said case by Order dated 30th November 2017 passed in Criminal Case No.103 of 2017.

14. It is the contention of Ms. Bhosale, learned APP that the charge is framed by Order dated 21st August 2024. However, Mr. Patil, learned Counsel for the Applicant states that the charge is not yet framed. In any case assuming that the charge is framed, as the prosecution proposes to examine 42 witnesses, considerable time will be required for conclusion of the trial.

15. However, there is substance in the contention raised by Ms. Bhosale, learned APP that wife of the deceased who is the eye-witness is staying alone and therefore there is possibility that the Applicant will pressurize her.

16. In view of said submission made by Ms. Bhosale, learned APP, Mr. Patil, learned Counsel for the Applicant, after taking instructions, states that the Applicant will therefore not reside

within District – Kolhapur and the Applicant will reside at C/o Sujata Sanjay Walim, Anjira Park, Koyna Vasahat, Karad, District – Satara and he will report to the Karad Police Station, District – Satara.

17. The Applicant does not appear to be at risk of flight.

18. Accordingly, the Applicant can be enlarged on bail by imposing conditions.

19. In view thereof, the following order:

ORDER

(a) The Applicant – Mahesh Maruti Kamble be released on bail in connection with C.R. No.4 of 2023 registered with the Ichalkaranji Police Station, District - Kolhapur on his furnishing P.R. Bond of Rs.50,000/- with one or two solvent sureties in the like amount.

(b) The Applicant shall not enter the Kolhapur district after being released on bail, except for reporting to

the Investigating Officer, if called, and for attending the trial.

- (c) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (d) The Applicant shall report to the Karad Police Station, District - Satara once every week, on every Sunday between 11:00 a.m. and 01:00 p.m. till the conclusion of the trial. The Police Inspector of Karad Police Station, District - Satara to communicate details thereof to the Investigating Officer.
- (e) The Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.

- (f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.
- (h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

20. The Bail Application is disposed of accordingly.

21. It is clarified that the Trial Court shall decide the case on its merits, uninfluenced by the *prima facie* observations made in this order.

[MADHAV J. JAMDAR, J.]