

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

BAIL APPLICATION NO. 555 OF 2023

Santosh Vitthal Pandhare .Applicant
Versus
The State of Maharashtra .Respondent

Mr. Niranjan Mundargi i/b. Ms. Keral Mehta, Advocates for the Applicant
Mr. P. H. Gaikwad, APP, for the Respondent – State

CORAM: MADHAV J. JAMDAR, J.
DATE: 23.01.2024

P. C.

1. Heard Mr. Niranjan Mundargi, learned Counsel appearing for the Applicant and Mr. Gaikwad, learned APP appearing 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.	878 of 2021
2.	Date of Registration of F.I.R.	15.07.2021
3.	Name of Police Station	Sangola Police Station, Solapur Rural
4.	Sections invoked	302, 201, 120B r/w. 34 of the Indian Penal Code, 1860
5.	Date of Incident	15.07.2021
6.	Date of Arrest	27.07.2021
7.	Date of filing of Charge-sheet	22.10.2021

3. At the outset, it is to be noted that co-accused - Mr. Satish Mahadeo Madane was released on bail by a learned Single Judge (Coram : C. V. Bhadang, J.) by Order dated 02.03.2022 passed in B. A. No. 4358 of 2021, co-accused - Mr. Prakash Gorakh Kolekar was released on bail by a learned Single Judge (Coram : N. R. Borkar, J.) by Order dated 15.11.2022 passed in B. A. No. 2278 of 2022 and co-accused - Mr. Vilas Babu Sargar was released on bail by a learned Single Judge (Coram : Shivkumar Dige, J.) by Order dated 17.10.2023 passed in B. A. No. 3929 of 2022. However, the present Bail Application is listed before this Bench pursuant to the administrative decision as reflected in Notice dated 19.01.2024 issued by Registrar (Judicial - I).

4. As per the prosecution case, Accused No.1 - Mr. Vilas Babu Sargar is the main conspirator. In the incident in question, Mr. Vijay Vilas Sargar, son of Accused No.1 has been killed. The statement of the mother of the deceased - Ms. Kavita Vilas Sargar recorded on 04.08.2021 shows that the deceased used to abuse and assault family members of Accused No.1 for the past three to four years. He used to assault the family members by fist and kick blows and also with other weapons. The said statement of the mother of the deceased also shows that on 11.07.2021, said Vijay Sargar went with a small tempo, bearing No.

MH-09/CU/0464 for purchasing some material. He did not return for about two to three days. Therefore, the family members were insisting Accused No. 1 - Mr. Vilas Sargar i. e. father of the deceased to lodge a complaint with the Police. However, Accused No.1 - Mr. Vilas Sargar informed them that henceforth the deceased would not return to the house and would not abuse and assault the family members. According to the prosecution, Accused No.1 had given a contract to Accused Nos. 2 to 5 to kill the deceased. As per the prosecution case, Accused Nos. 2 to 5 have actually killed the deceased.

5. Mr. Mundargi, learned Counsel appearing for the Applicant submitted that the entire prosecution case is based on circumstantial evidence. There are no eye-witnesses to the actual incident. Except Accused No.2 and the present Applicant, all the other Accused have been enlarged on bail. He further submitted that in fact, Accused No.1 is the main conspirator and he has been granted bail by a learned Single Judge (Coram : Shivkumar Dige, J.) by Order dated 17.10.2023 passed in B. A. No. 3929 of 2022. He submitted that the Applicant was arrested on 27.07.2021 and although Charge-sheet is filed on 22.10.2021, there is no progress in the trial and therefore, the Applicant be enlarged on bail.

6. Mr. Gaikwad, learned APP appearing for the Respondent – State vehemently opposes the Bail Application on the ground that although the case is of circumstantial evidence, there is incriminating material against the present Applicant. He submitted that there is recovery of a skull, a motor cycle, cash worth Rs.13,500/-, a *chatai*, *chadar*, plastic bags, three blankets and pieces of blankets at the instance of the Applicant. He further submitted that the mobile conversation clearly shows involvement of the present Applicant in the crime. He also submitted that there is evidence to show that the Applicant was last seen together with the deceased.

7. Mr. Mundargi, learned counsel appearing for the Applicant considering the above submissions of the learned APP submitted that as far as recovery against the present Applicant is concerned, the date of incident is 15.07.2021 and recovery of skull was on 30.07.2021. He submitted that as far as recovery of motor cycle is concerned, there is nothing on record to show that the said motor cycle was used in the crime. As far as recovery of Rs.13,500/- is concerned, there is no material to show that the same is connected with the present crime. As far as mobile conversation is concerned, the said conversation clearly shows that it is Accused No.1 – Mr. Vilas Sargar who is the main

accused and the main conspirator.

8. This is a case where the crime was registered on 15.07.2021 and the Charge-sheet was filed on 22.10.2021. The Applicant was arrested on 27.07.2021. Till date, there is no progress in the trial and even the charge is also not framed. As per the Charge-sheet, there are 42 witnesses to be examined by the prosecution. Thus, trial is not likely to be concluded shortly and the same will take considerable time.

9. Mr. Gaikwad, learned APP appearing for the Respondent - State submitted that although Accused No.1 has been enlarged on bail, same will have no relevance as far as the present Applicant is concerned, as there is recovery of a skull, motor cycle, Rs.13,500/-, *chatai*, *chadar*, plastic bags, three blankets and pieces of blankets at the instance of the Applicant. However, it is required to be noted that even as per the prosecution case, the main accused is Accused No.1 - Mr. Vilas Sargar, father of the deceased. As per the prosecution case, father of the deceased had given a contract to kill the deceased to the accused Nos. 2 to 5. The Applicant is accused No. 3. Accused No. 4 is already granted bail. Accused No. 5 is a juvenile. The main accused i. e. father of the deceased has already been enlarged on bail. As far as relevant discussion in the Order dated 17.10.2023 passed by a

learned Single Judge (Coram : Shivkumar Dige, J.) in B. A. No. 3929 of 2022 regarding role of the main conspirator, the same reads as under :-

“5. I have heard both learned counsel, perused the FIR and charge-sheet. It is alleged that the applicant is the main conspirator to kill deceased Vijay. It is alleged that the applicant had given amount of Rs. 1,40,000/- to the co-accused to kill the deceased. But the said amount is not recovered from the co-accused, nor any documents were produced on record to show that the said amount was transferred to co-accused to prove the role of conspiracy. Applicant is behind bar for more than two years. Investigation is completed and charge-sheet has been filed. Yet the trial has not been commenced. Two co-accused have been released on bail.”

10. As far as the mobile conversation is concerned, there is substance in the submission of Mr. Mundargi, learned Counsel appearing for the Applicant that in fact, the said mobile conversation clearly shows involvement of Accused No.1 - Mr. Vilas Sargar, who has been enlarged on bail.

11. According to the prosecution, Accused Nos.2 to 5 have participated in the assault on the deceased. Accused No.4 has already been granted bail by this Court. Accused No.5 is a juvenile offender.

12. As set out herein above, the present Applicant has been arrested on 27.07.2021, Charge-sheet has been filed on 22.10.2021 and till date, there is no progress in the trial. The

Applicant is incarcerated since two years and six months. There are 42 witnesses as per the Charge-sheet. The trial is unlikely to conclude any time soon and is likely to take a considerably long time.

13. Mr. Mundargi, learned Counsel appearing for the Applicant on instructions states that as several witnesses are residing in Taluka - Sangola, District - Solapur, the Applicant will not reside in Taluka - Sangola, District - Solapur and that the Applicant will reside at the residence of his relative - Mr. Narayan Jaggu Kachre, At post - Balewadi, Taluka - Atpadi, District - Sangli - 415 301 and will report at the Atpadi Police Station.

14. The Applicant does not appear to be at risk of flight. There are no antecedents.

15. Accordingly, the Applicant can be enlarged on bail by imposing conditions. In view thereof, the following order:-

ORDER

(a) The Applicant - Mr. Santosh Vitthal Pandhare be released on bail in connection with C. R. No. 878 of 2021 registered with the Sangola Police Station, Taluka - Sangola, District - Solapur on his furnishing P. R. Bond of Rs.25,000/- with one or two solvent sureties in the like amount.

(b) The Applicant shall not enter Taluka - Sangola, District - Solapur after being released on bail, except for reporting to the Investigating Officer, if called.

(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 Atpadi Police Station, Taluka - Atpadi, District - Sangli once every week, on every Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Atpadi Police Station, Taluka - Atpadi, District - Sangli 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 evidence and shall not contact or influence the Complainant or any witnesses 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.

16. The Bail Application is disposed of accordingly.

[MADHAV J. JAMDAR, J.]