

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

78 BAIL APPLICATION NO. 2261 OF 2024
WITH
CRIMINAL APPLICATION NO. 203 OF 2025
IN BA/2261/2024

DHIRAJ ANIL MANDKAR
VERSUS
THE STATE OF MAHARASHTRA

Advocate for Applicant : Mr. Natu Sharad V.
APP for Respondent/State : Mr. P.P. Dawalkar
Advocate for assist to APP : Mr. N.S. Salunke

CORAM : ARUN R. PEDNEKER, J.

DATE : 04/08/2025

P.C. :

1. Criminal Application No. 203/2025 filed for assist to APP is allowed and disposed of. Mr. N.S. Salunke, learned counsel is allowed to assist APP.
2. Heard the learned counsel for the applicant, the learned APP for the respondent-State and Mr. N.S. Salunke, learned counsel for applicant in Criminal Application No. 203/2025.
3. The applicant is seeking bail as he is arrested on 23.5.2021 in connection with Crime No. 63/2021 dated 23.5.2021 registered with Shirur Police Station, Dist. Beed for the offences punishable under sections 302, 364, 365, 397, 120-B, 201 r/w. 34 of I.P.C.
4. This Court by order dated 25.6.2025 has recorded the submissions of the parties as under :-

"1. Heard learned counsel for the applicant, learned APP for the respondent-State, and learned counsel assisting the learned APP.

2. The learned counsel for the applicant submits that the allegation against the present applicant (Accused No.3) is that he held the deceased by the waist while the murder was being committed. It is alleged that Accused No.2 restrained the hands of the deceased, and the present applicant (Accused

No.3) held him by the waist, while Accused No.1 assaulted the deceased with a knife, resulting in his death. Thereafter, all the accused allegedly took away the gold ornaments belonging to the deceased.

3. Learned counsel submits that a similarly placed co-accused, i.e., accused No.2, has been granted bail by this Hon'ble Court by order dated 05/01/2024. He further submits that although the present applicant had filed his bail application earlier in point of time, it was not listed or considered along with Bail Application No.1869 of 2023. When the present bail application was taken up for consideration, the counsel was unaware of the order passed in the said Bail Application No.1869 of 2023, and accordingly, the earlier bail application was withdrawn as the Court was not inclined to grant bail at that stage. He submits that, unfortunately, he could not produce the said bail order at the relevant time.

4. It is further submitted that while dismissing the earlier bail application on 13/03/2025, this Court observed that the Trial Court should conclude the trial within a period of six months and granted liberty to the applicant to apply afresh for bail. The learned counsel now submits that the present bail application is filed afresh, pointing out that the applicant has been in custody for more than four and a half years, and that there is parity between the applicant and accused No.2, who has already been granted bail.

5. He submits that it is accused No.1 who is alleged to have assaulted the deceased with a knife, while the role attributed to the present applicant is limited to restraining the deceased along with accused No.2. There is no direct evidence that the applicant took the deceased into the shop, nor is there any independent witness stating that the applicant was present in the shop at the time of the incident. The only evidence available against the applicant is the recovery of gold ornaments belonging to the deceased at his instance. It is submitted that even accused No.2, against whom similar allegations of holding the deceased and recovery of ornaments exist, has been granted bail. Thus, the applicant seeks bail on the ground of parity.

6. On the other hand, learned counsel assisting the learned APP opposes the application and submits that similar arguments on the ground of parity were earlier canvassed before this Court, and when the Court was not inclined to grant

bail, the application was withdrawn.

7. In response, learned counsel for the applicant submits that more than one year has passed since the earlier order, and the delay in trial proceedings justifies reconsideration. Furthermore, as co-accused has already been granted bail, and the applicant has remained in custody for over four and a half years, bail may now be considered.

8. In view of the above submissions, learned APP seeks time to respond.

9. List the matter on 01/07/2025."

5. Today the learned counsel for the applicant has produced the copy of order dated 5th January, 2024 passed by this Court in BA No. 1869/2023 in the present crime by which regular bail has been granted to accused No. 2. The learned counsel submits that he is not aware of the above order and as such, he could not point out this order on earlier date and unfortunately, the earlier bail application came to be withdrawn. The learned counsel submits that in any event applicant is behind bars since last four years and five months. The learned counsel submits that although the directions were given by this Court to complete the trial within six months, very little progress has been made and only 23 witnesses have been examined and 63 witnesses have remained to be examined. The learned counsel therefore prays to release the applicant on bail on the ground of parity and on the ground of belated trial.

6. The learned APP as well as the learned counsel appearing for assist to APP have strongly opposed the application by submitting that role of the present applicant is slightly higher than the co-accused, who has been granted bail by this Court vide aforesaid order. They submit that after the assault the dead body of the deceased was put on the motorcycle and applicant had carried the dead body along with accused No. 1. Therefore, the learned APP as

well as the learned counsel appearing for assist to APP submits that as such, role of the applicant is fairly distinguishable than the role of the accused No. 2. They therefore pray to reject the application.

7. Even after the order dated 5th May 2025, although the directions were given to complete the trial within six months. However, as of now there is very little progress in trial. Considering this aspect and considering that the accused No. 2 has been granted bail (his role is nearabout identical to the accused No. 2 in the assault on the deceased) and that it was not pointed out to this Court while deciding earlier bail application of the applicant that the co-accused No. 2 was granted bail as the applicant was not aware of the same, this Court holds that applicant is also entitled for regular bail on the ground of parity as well as on the ground of belated trial.

8. In view of the above, the application is allowed in the following terms :

- a] The applicant shall be released on bail in connection with Crime No. 63/2021 dated 23.5.2021 registered with Shirur Police Station, Dist. Beed for the offences punishable under sections 302, 364, 365, 397, 120-B, 201 r/w. 34 of I.P.C., on furnishing PR bond of Rs.20,000/- with one or two sureties in the like amount to the satisfaction of the trial Court.
- b] The applicant, upon being released on bail, shall not contact the informant, in any manner whatsoever, during the pendency of the trial.
- c] The applicant shall co-operate with the trial Court and he shall attend each and every date, unless exempted by the trial Court, for reasons to be recorded in writing.
- d] The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses and other persons concerned with the case.

e] The applicant, upon being released on bail, shall place on record of the trial Court the details of his Contact Number and residential address with updates in case of any change.

9. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled.

It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

10. The application stands disposed of.

[ARUN R. PEDNEKER, J.]

SSC/