

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2388 OF 2024

Gajmal Kalu Bhavar	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

WITH
INTERIM BAIL APPLICATION NO.2337 OF 2024
IN
BAIL APPLICATION NO.2388 OF 2024

Pandhari Navasu Kevari	.. Intervenor
IN THE MATTER BETWEEN:	
Gajmal Kalu Bhavar	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Raju Suryawanshi, Advocate for Applicant.
 - Mr. Rushikesh M. Pethe, APP for Respondent – The State of Maharashtra.
 - Dr. Nilesh V. B. Pawaskar a/w. Ms. Aparna D. Vhatkar and Ms. Ayesha Patel, Advocates for Intervenor.
 - Mr. Manoj V. Maslekar, PSI, Police Station Shahapur, District – Thane.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 21, 2025

P.C.:

- 1.** Heard Mr. Suryawanshi, learned Advocate for Applicant; Pethe, learned APP for Respondent – the State of Maharashtra and Dr. Pawaskar, learned Advocate for Intervenor.
- 2.** This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking Bail in connection with

C.R. No.328 of 2023 registered with Shahapur Police Station for offences punishable under Sections 302, 34, 498A, 324 of Indian Penal Code, 1860 (for short '**IPC**') and Sections 3 and 25 of the Arms Act.

3. Applicant is one of the Accused who is the brother of principal Accused namely original Accused No.4 whose name is Aatya Kalu Bhavar. Applicant before me is Gajmal Kalu Bhavar who is brother of Applicant. The third brother and parents of Applicant are the other accused persons. As per prosecution case, there are two victims who were injured and succumbed to their injuries. One is Ranjana Shiva Bhavar, wife of Shiva Kalu Bhavar, another brother of Applicant and her one and half year son called Dhiraj Shiva Bhavar.

4. Prosecution case as is borne out from record is that at 9:30 p.m. on 19.09.2023 Aatya Kalu Bhavar got enraged due to an altercation with Ranjana who did not give him food and in a rage of fury assaulted her with the ठासणीची बंदूक (fire arm). In the process her one and half year old son Dhiraj got injured on his head and suffered a fatal head injury. At page Nos.124 and 125 the victim's forensic report has been placed on record. The forensic medico-legal report shows the gruesomeness of the act and it is seen that there are atleast 8 fire arm injuries which are shot by the Accused namely Aatya Kalu Bhavar on the body of victim – Ranjana.

5. First Information Report (for short '**FIR**') dated 20.09.2023 is

lodged by Pandhari Navasu Kevari First Informant – brother of the deceased, which is appended at page No.95 of the Application. According to the FIR, it is case of prosecution that since 2022 the deceased victim was suffering the harassment, abuses and torture at the hands of the entire Bhavar family including her husband and as also the Applicant before me quietly without any opposition. It is stated in the FIR that there used to be occasional quarrels on account of preparation of food by the victim Ranjana and the entire Bhavar family members used to abuse her. It is also stated that sometime in the year 2022, victim had consumed poison due to which she was hospitalised for some time and her husband Shiva had taken care of her at that time. Save and except the above general allegations, no specific incident is stated in the FIR or any of the statements recorded.

6. In so far as the present incident is concerned, FIR states that on the fateful day at about 09:30 p.m. in the night Complainant received a phone call from Applicant informing him that his sister Ranjana had a fall due to which she was injured and admitted to a local hospital at Khardi. All family members of Ranjana therefore rushed to the local hospital, Khardi where they found that Ranjana and her son – Dhiraj were grievously injured. Family members of Ranjana assisted Applicant's family members to move the injured to the Shahapur Gramin Hospital where she was declared dead on admission.

7. Mr. Suryawanshi, learned Advocate for Applicant would submit that role of Applicant taken at the highest from reading of the FIR and case of prosecution borne out from record would be only to the extent of his alleged participation in the charges under Section 498A. He would submit that the said charges are general relating to causing physical and mental harassment of deceased Ranjana and not specific. According to him role of Applicant is not specifically alleged relating to any such incident. He would submit that Applicant was not present at the scene of crime when the incident took place on 19.09.2023 at 9:30 p.m. and therefore would plead that Applicant be enlarged on bail.

8. Mr. Pethe, learned APP would persuade the Court to consider the gravity of the crime and the heinous nature in which the crime has taken place. He would submit that the gruesome manner in which the incident has occurred on 19.09.2023 and conduct of all family members of original Accused No.4 namely Aatya Kalu Bhavar who shot with the firearm in such that they have conspired to protect the perpetrator and offender and hence Applicant is not entitled to be released on bail. That apart, he would submit that complicity of Applicant in the crime is clearly established when the FIR is read since it clearly alleges Applicant's complicity in the mental harassment and torture that was caused to deceased Ranjana. He would therefore persuade the Court to reject the present Application.

9. I have permitted Dr. Pawaskar, learned Advocate for Intervenor namely First Informant – brother of Ranjana to address the Court. Intervenor has filed Interim Application No.2337 of 2024. Dr. Pawaskar in his submissions would persuade the Court to read unnumbered paragraph Nos.4 and 5 of the FIR at page No.95 to form an opinion and would submit that role of Applicant in the present crime will have to be assessed from his own conduct as appearing therein. He would submit that apart from the fact that Applicant has been categorically named in the FIR as one of the perpetrator of the harassment meted out to the deceased – Ranjana, Applicant has lied on the phone call which was made to inform about the fateful incident to the brother of Ranjana.

10. He would submit that such conduct of Applicant would be have to be considered by the Court in the realm of provisions of Section 239 of Bharatiya Nyaya Sanhita, 2023 (for short ‘**BNS**’) from which it would be evident that Applicant’s conduct was to protect the offender namely his brother Aatya Kalu Bhavar and provide false information of occurrence of the incident. He would submit that complicity of Applicant in the present crime is to be assessed from his conduct and allegation made against him apart from other Bhavar family members under Section 498A of the IPC also to be read with relevant provisions of Section 238 of the BNS. He would submit that common intention would therefore have to be derived as releasing

Applicant on bail would be detrimental to the Informant and the witnesses in the present case considering his role.

11. He has placed on record the decision of the Supreme Court in the case of *Jagjeet Singh & Ors. Vs. Ashish Mishra @ Monu and Anr.*¹ and would draw my attention to paragraph No.30 of the said decision which refers to the decision of the Supreme Court in the case of *Prasanta Kumar Sarkar Vs. Ashish Chatterjee & Anr.*² and would submit that the 8 factors listed therein to be taken into account for determining the bail application if applied to the facts of the present case, then this Court can reasonably come to an inference *qua* all the factors that releasing the Applicant on bail would be detrimental to the prospect of the trial as also it would be detrimental to the victim's family and witnesses in the present case.

12. He would draw my attention to page No.193 of the Application which is the FIR dated 19.12.2023 filed against the Employer of the present Applicant before the Court for administering threat to the family members of the First Informant and the deceased victim outside the Sessions Court, Kalyan when they had gone to attend the date in the present matter before the Trial Court and would therefore submit that the present Application be dismissed.

13. I have heard learned Advocates at the bar and considered

¹ Criminal Appeal No.632 of 2022 decided on 18.04.2022.

² (2010) 14 SCC 496.

their rival submissions. Submissions made by the learned Advocates has received due consideration of the Court.

14. It is no doubt that the present crime is an extreme act of assault on the victim - Ranjana by the weapon in question. *Prima facie*, it is seen that the victim was fired upon atleast 8 times and in that act an unfortunate fatal injury was suffered by her 1 and ½ year old son also. From the record it is seen that on the date and time of the incident i.e. on 19.09.2023, the victim - Ranjana, her 1 and ½ year old son and Applicant's brother namely original Accused No.4 – Aatya Kalu Bhavar were the only persons present inside the house when said Accused asked Ranjana to serve him food. Record shows that on that date wife of the said Accused had gone to her mother's place and hence he asked Ranjana, wife of his brother – Shiva to serve him food. Other family members admittedly were not present in the house when the incident occurred.

15. Record shows that time and again even prior to the occurrence of the fateful incident there used to be quarrel on the ground and issue of food prepared by the said victim – Ranjana according to Complainant's statement. This is borne out from the statement of some of the witnesses who are relatives of the victim as also the FIR as recorded. Witness statements also show that in so far Applicant is concerned, he was not a permanent resident of the said

house where the incident occurred but one of the submission of Dr. Pawaskar is that he is the one who informed the brother of victim in the first instance after the incident and therefore appropriate investigation has not been done as to who was present in the house at the time of the incident. All that would be the subject matter of the trial as in an application for bail before me, I cannot dissect the evidence.

16. *Prima facie* from the record, it is seen that recovery panchanama is recorded at page No.131 of the Application and weapon in question has been seized. Death Certificate is appended at page No.209 and forensic report is appended at page Nos.124 and 125 of the Application. Confessional statement of original Accused No.4 - Aatya Kalu Bhavar is appended at page No.131 of the Application. The theory and precise reason as to why and how victim was killed is *prima facie* seen as delineated hereinabove. Presence of Applicant not being present at the scene of the crime is *prima facie* established from the material on record.

17. The apprehension expressed by Mr. Pethe as also Dr. Pawaskar can undoubtedly be taken care of since they apprehend threat from the Applicant if he is released on bail since he is influential. Considering the role of Applicant which is pressed specifically by Mr. Pethe and Dr. Pawaskar *qua* Section 498A of IPC

and from reading of the FIR and the witness statements, *prima facie* it is seen that there are no specific incidents which are stated or attributable to causing mental harassment to the victim and the statements are in general. In that view of the matter, I am inclined to grant bail to the present Applicant *qua* his role in the crime. Bail Application stands allowed on the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount;
- (ii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 a.m. to 12:00 p.m. for the first three months after release and thereafter as and when called;
- (iii) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (iv) Applicant shall not reside and enter the jurisdiction of Thane District – Rural area until

completion of the Trial, save and except to mark his attendance as directed in this order;

- (v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vi) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (vii) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time; and
- (viii) Any infraction of the above conditions shall entail prosecution to apply for cancellation of this order.

18. The aforesaid observations are *prima facie* on the basis of record of the case which have been argued before me and is an expression of opinion by this Court only for the purpose of enlargement of Applicant on bail and shall not influence the trial in the present case.

19. The hearing in the above Bail Application concluded at 04:00 p.m. yesterday and the bail order was dictated and pronounced in open Court immediately thereafter from the dias. After the above order was pronounced, Dr. Pawaskar, learned Advocate for the Intervenor –

Complainant requested me to stay the operation of the order for a period of 8 weeks to test its correctness in the Supreme Court due to the extreme brutality and gravity of the crime in question and threat perception to the family of the First Informant – Complainant. At that time I agreed to stay the order. However while finalising and correcting the draft order and before signing it, I am of the opinion that expressing grant of stay of the above order was not correct in the Bail Application. Hence before I sign the order, I listed the Application today for the limited purpose of rehearing the request made for stay of the above order by the Intervenor. Ms. Vhatkar has appeared for the Intervenor – Complainant. She has addressed me on the issue of stay and has however requested that an embargo be put on the Applicant from entering the jurisdiction of Thane – Rural area until the completion of trial. Her apprehension is already addressed in the above order. However, considering the role of Applicant in the present crime and reasons stated in the above order, request made for stay of the order is therefore rejected.

20. Bail Application is allowed and disposed. In view of disposal of Bail Application, Interim Application does not survive and is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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