

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3213 OF 2023
WITH
INTERIM APPLICATION NO.3386 OF 2024**

Gopal Bajirao AnkusharaoApplicant
Vs.
The State of Maharashtra & Anr.Respondents

Mr. Umesh Jamdar, i/b. Mr. Shailesh Kharat, for the Applicant.
Mr. Pankaj P. Deokar, APP, for the Respondent No.1-State.
Mr. Tushar Sonawane (Through VC) with Mr. Somnath Thengal, for
the Respondent No.2.
Mr. N. S. Ronge, HC/186, DySP Office, Pandharpur is present.

CORAM : MRS. VRUSHALI V. JOSHI, J.

DATED : 23rd FEBRUARY 2026

PC.:-

1. The Applicant is arrested in connection with Crime Registration No.244 of 2018 registered with Pandharpur City Police Station, District Solapur for the offences punishable under Sections 302, 303, 120B, 201, 143, 147, 148 read with 149 of the Indian Penal Code, Sections 3, 4 25, 5 and 27 of the Arms Act, 1959, Section 135 of the Maharashtra Police Act, 1951 and Sections 3(1)(i) 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control Of Organised Crime Act, 1999 ('MCOCA')

2 The Applicant is claiming bail on the ground of long incarceration. Since last 8 years he is in jail and the trial is not yet initiated. The counsel for Applicant has stated that out of 27 accused, 22 accused are released on bail, who are having same role. The parity is applicable to this Applicant. Hence, on the ground of long incarceration and parity, the Applicant has filed this application.

3. The counsel for the Applicant has pointed out that the application filed by this Applicant for bail is rejected by the Hon'ble Apex Court. In similar situation, though the bail of co accused was rejected by the Hon'ble Apex Court, this Court has granted bail on the ground of long incarceration. The Applicant is claiming parity on that ground. Hence, prayed to release him on bail.

4. The learned APP opposed the application stating that the Applicant is the gang leader. There are 10 crimes registered against him. During his custody, when he was in hospital, he hatched the conspiracy with the other co accused and another crime, i.e., of murder was committed. Considering his role and as he is a gang leader, though there is delay in trial, prayed to reject the application.

5. The counsel for the complaint/the mother of victim has opposed the application stating that the Applicant has hatched the conspiracy with the other co accused and the murder of son of complainant was committed.

6. The counsel for Respondent No.2 has relied on the judgment of the Hon'ble Apex Court in the case of ***Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (Koli) & Anr.***¹, particularly on the observations in paragraph No.40, in support of his argument about the aspect of parity and role attached to accused, their position in relation to incident and to victim is of utmost importance, which reads as under:

“40. We are also constrained to record our disapproval of the manner in which the application for bail of Vishan (A-6) was disposed of. The High Court sought to support its decision to grant by stating that it had perused the material on record and was granting bail “without discussing the evidence in detail” taking into consideration:

- (1) the facts of the case;*
- (2) the nature of allegations;*
- (3) Gravity of offences; and*
- (4) role attributed to the accused.”*

¹ (2021) 6 SCC 230.

7. He has also relied on the Judgment of the Hon'ble Apex Court in the case of *State of Kerala v. Mahesh*,² wherein the Court has considered the factors to be considered, while considering the bail on the ground of long incarceration. The counsel for Respondent No.2 has also pointed out that it is observed by this Court that while considering the application for transfer of the trial to another Court, the trial Court was scared of threat perception and has requested for protection.

8. Heard learned counsel appearing for both the parties and the counsel for the complainant.

9. The Applicant is coming before this Court on the ground of parity and long incarceration. The Applicant, who is a gang leader, has hatched the conspiracy and committed another crime of murder during his judicial custody. The counsel for Applicant has stated that the persons, who have actually participated in committing the crime are already released on bail. The role assigned to this Applicant is hatching the conspiracy as the leader of the gang. There are 10 antecedents against the Applicant. The threat perception is observed by this Court while considering the transfer application.

² (2021) 14 SCC 86.

10. The Hon'ble Apex Court in paragraph No.16 of the Judgment in the case of *State of Kerala v. Mahesh (supra)*, has observed as under:

“16 In Prasanta Kumar Sarkar v. Ashis Chatterjee and Anr. reported in (2010) 14 SCC 496, D.K. Jain, J., speaking for a two-Judge Bench of this Court laid down the principles for examining the correctness of orders granting bail to an accused. This Court held:-

“9. ...It is trite that this Court does not, normally, interfere with an order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*

(vi) likelihood of the offence being repeated;
(vii) reasonable apprehension of the witnesses being influenced; and
(viii) danger, of course, of justice being thwarted by grant of bail.
10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non- application of mind, rendering it to be illegal.””

In case in hand, there is likelihood of the offence being repeated and factor (v) and (vii) are also applicable.

11. It is mentioned in the status report filed by the concerned Court that the reason given for delay in trial is that all the other co accused are filing the applications one after another and 857 exhibits are filed by the accused and co accused in this case. Considering the role played by the Applicant and as the Applicant, who is the gang leader has committed an offence during his custody, this is not a fit case to release the Applicant on bail on the ground of parity or long incarceration.

12. Hence, the Application is rejected.

13. In view of disposal of Bail Application, Interim Application pending therein shall also stand disposed of.

(MRS. VRUSHALI V. JOSHI, J.)