

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 566 OF 2016

Kalu s/o Ranu Mandavkar,
Age: 80 years, Occ: Labour,
R/o. Dalambi, Tq. & Dist. Akola,
at present R/o Near Saibaba Mandir,
Paldi, Tq. Dharangaon,
Dist. Jalgaon.

...Applicant

versus

The State of Maharashtra
Through Police Officer,
Police Station Dharangaon,
Dist. Jalgaon.

...Respondent

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Mr. U. B. Deshmukh, Advocate h/f Mr. Vishnu B. Madan Patil, Advocate for
applicant
Mr. A. S. Shinde, A.P.P. for respondent/State

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CORAM : N.W. SAMBRE, J.

DATE : 29th FEBRUARY, 2016

ORAL ORDER :

The applicant is seeking regular bail in Crime No. 77 of 2015 registered on 09/05/2015 with Dharangaon Police Station, District Jalgaon for the offence punishable under Sections 307, 302 of Indian Penal Code.

2. While trying to make out a case for grant of regular bail, learned Counsel for the applicant would urge that the investigation in the matter is complete and charge sheet is already filed. According

to him, the applicant is behind the bars for more than nine months. He would urge that in view of filing of the charge sheet and the fact that he is about 73 years of age, there is hardly any likelihood of running away or tampering the evidence. He would then invite attention of this Court to the conduct of applicant, as according to him, the crime in question occurred because of grave and sudden provocation and in a fit of anger, the applicant has murdered his daughter in law.

3. Learned Counsel for the applicant has sought to be placed reliance on the following judgments of the Apex Court for the purpose of grant of regular bail :-

1. Dipak Shubhashchandra Mehta Vs. C.B.I. & anr. [Criminal Appeal No. 348/2012 (arising out of S.L.P. (Cri.) No. 8995/2011)]
2. Gulam Nabi Vs. State of Maharashtra, thr. PSO Dhamangaon Badhe, Tq. Motala, Dist-Buldana (Criminal Appeal (BA) No. 456/2015) – (Bombay High Court)
3. Shri Amit Anand Pai Raikar @ Amit Pai Vs. The State of Goa & anr. [2016 ALL MR (Cri.) 268] – (Bombay High Court)
4. Mahesh Bhimraj Jadhav Vs. The State of Maharashtra [2015 ALL MR (Cri.) 250] – (Bombay High Court)

5. Sanjay Chandra Vs. C.B.I. [Criminal Appeal No. 2178/2011 (arising out of SLP (Cri.) No. 5650/2011)]
6. State of Maharashtra etc. Vs. Dhanendra Shriram Bhurle etc. [Criminal Appeal No. 269/270 of 2009 (arising out of SLP (Cri.) No. 6687-6688 of 2008)]
7. Juan Ponce Enrile Vs. Sandiganbayan (Third Division), and People of The Philippines
8. State of Maharashtra & ors. Vs. Lalit Somdatta Nagpal & anr. [S.L.P. (Cri.) No. 3320-21 of 2005]

4. One more ground that is pressed into service that the applicant is suffering heart ailment and is not keeping good health. According to him, the above referred fact coupled with the advanced age and conduct of the applicant contemplates that there is hardly any likelihood of applicant running away from the Court process and as such, prayed for grant of bail.

5. Learned A.P.P. opposed the application on the ground that there is strong *prima facie* case as against the applicant. He has taken me through the charge sheet which depicts recovery and other material on record so as to infer that there is *prima facie* case against him.

6. Having considered the rival contentions, it is required to be noted that the Apex Court in the matter of Dipak vs. Central Bureau of Investigation (supra) in paragraph 18 has laid down three issues which are required to be considered by the Court while granting bail. Paragraph-18 of the judgment in the matter of Dipak (supra) reads thus :

“18. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. The Court granting bail has to consider, among other circumstances, the factors such as a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant and ; c) prima facie satisfaction of the court in support of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted.

Considering the present scenario and there is no possibility of commencement of trial in the near future and also of the fact that the appellant is in custody from 31.03.2011, except the period of interim bail, i.e. from 15.09.2011 to 30.11.2011, we hold that it is not a fit case to fix any outer limit taking note of the materials collected by the prosecution. This Court has repeatedly held that when the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. As posed in the Sanjay Chandra's case (supra) we are also asking the same question i.e. whether the speedy trial is possible in the present case for the reasons mentioned above."

7. If the case of the applicant is tested in the light of above three parameters, it is required to be noted that there are serious accusations against the applicant and the investigation till date depicts the strong case against him. In that view of the matter, in my opinion, no case for grant of bail is made out. The application fails, stands rejected.

[N.W. SAMBRE, J.]