

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.86 OF 2021
WITH
CRIMINAL APPLICATION NO.526/2021

Nasir Alias Appi Mirza s/o Hyssain
Baig Mirza = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT/S

Ms.AN Ansari, Advocate for Applicant;

Mr.SB Narwade, APP for Respondent-State.

Mr. Shaikh Mazhar A.Jahagirdar, Adv. For assist APP

CORAM : SMT.VIBHA KANKANWADI, J.

Reserved on : 5th March, 2021.

Pronounced On: 23rd March, 2021

PER COURT :-

1. Criminal Application No.526/2021 moved to assist APP is allowed and disposed of.

2. Present applicant is original accused No.1 in Sessions Case No.30/2018, arising out of CR No.65/2017 registered with Chalisgaon police Station for the offences punishable under Sections 302, 307, 326, 143, 147, 148, 324, 323, 504, 506 of IPC and under Sections 37(1)(3) and 135 of Bombay Police Act. The Sessions Case is pending before the learned District Judge-3 and Additional Sessions Judge, Jalgaon.

3. Heard learned Advocate and learned APP appearing for respective parties.

4. It has been vehemently submitted on behalf of the applicant that the applicant came to be arrested on 5.6.2017. Co-accused had filed Criminal Writ Petition No.214/2019 and this Court, while deciding the said writ petition on 10.4.2019, had directed the learned Sessions Judge to take all necessary steps for segregating the cases of the accused persons in jail from the accused persons who were absconding and and frame charge and dispose of the trial as earlier as possible within a period of one year from the receipt of the order. The absconding accused persons were also arrested and supplementary charge sheet is also filed. However, the matter has not proceeded from the stage of framing the charge. The present applicant is in jail since more than 3½ years and yet the matter has not progressed. His fundamental right of having a speedy trial is hampered. It has been furthers submitted that if the contents of the FIR and the entire charge sheet are taken into consideration, then it is crystal clear that the applicant is not an author of the fatal blow given to one Munna Shaha Gulab Shaha. The opinion given in post mortem shows cause of death as "hemorrhagic shock due to stab injury present over chest". No doubt, there are statements of the witnesses on record and the discovery is shown to be made by the present applicant regarding chopper, however, all of them have stated that Chopper has caused the

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injury to the hand of Munna Shah.

5. Though, the present applicant had approached this Court earlier by filing Bail Application No.1125/2018 and it was disposed of as withdrawn, by order dated 6.10.2018; yet there is absolutely no progress in the matter and, therefore, he has to approach this Court. In the meantime, certain other co-accused have been released on bail by this Court against whom also it was stated that they had used the weapon like stick and stone. The applicant is ready to abide by the terms of bail.

6. Learned APP has strongly opposed the application, who was assisted by learned Advocate Mr. Jahagirdar for original informant. It has been submitted that the present applicant is the main person from his gang and, in fact, the incident has taken place due to the rivalry between two gangs. The present applicant has used the Chopper; and it is specifically from the statements of the witnesses that he intended to give vital blow to the stomach of Munna Shah. But then as Munna Shah had tried to resist, the blow had hit the hand of Munna Shah. However, the blow given by the accused – Imtiyaz @ Ballu Husainbaig Mirza has caused injury to the chest on the right side of Munna Shah. The intention was to kill and when in all 15 persons had attacked the informant, deceased and one more injured and others, then it can be seen that it has created terror in the vicinity. If

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the applicant is released on bail, then it would affect the trial. The witnesses are from the same area, where the applicant is residing. The injuries received by the injured persons, i.e. informant as well as one Hyder ali Sayyed are serious in nature. The weapons used are sickle, knife, Chopper, Sticks and Stones. Therefore, the applicant does not deserve to be released on bail.

7. At the outset, it is to be noted that when it was pointed out that this Court, in Criminal Writ Petition No.214/2019, had passed an order on 10th April, 2019, directing the learned Sessions Judge to take all necessary steps for segregating the cases of the writ petitioners from the cases of the absconding accused and frame charge and disposal of the trial as early as possible within a year from the date of receipt of the order, it was thought fit to get status report from the concerned Court. A detailed report has been given almost in the form of Roznama. However, it is to be noted that most of the times, it appears that the accused persons, who were in jail, were not produced. The learned Additional Sessions Judge, who was not powerless to get production of those under-trials before him. But, it appears that no such steps has been taken. There is in fact, no statement as to when he received the order passed by this Court in Criminal Writ Petition No. 214/2019 dated 10th April, 2019. However, he says that charge was framed by him against accused Nos. 1 to 6 and 10 to 15 at Exh.180 on 30.7.2019. It

also appears that thereafter time has been consumed by moving the application for cancellation of bail and other such requests which were made by the under trials. Thereafter, it appears that accused Nos.7 and 9 had given an application for discharge. By the said order passed by this Court in Criminal WP No.214/2019, he was supposed to conclude the trial within one year, which would have ended by around 10th April, 2020. If we consider that order as starting point, but then, the lockdown has started from 22.3.2020. No doubt, it appears that from the said period of one year, there is no progress in the matter. However, it appears to be it was beyond the control of the concerned Court since the co-accused of the present applicant had kept the court engaged by filing different kind of applications.

8. Now, turning to the merits of the case is concerned, it is to be noted that the present applicant has discovered the Chopper under Section 27 of the Indian Evidence Act. Many witnesses, including the eye-witnesses, have stated about the rivalry between two groups and it appears that the present applicant is leader of one of the groups. The role attributed to the present applicant is, blow of Chopper. The eye-witnesses have made statements that in fact the present applicant wanted to give blow on stomach of deceased Munna Shah. But then, Munna Shah had resisted it and, therefore, it had hit his hand. When we see the prima facie case and the evidence collected, then

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this aspect is required to be considered. Further, when 15 people stated to have attached that too with Chopper, sickle, stick, then the prima facie evidence would show intention to commit murder and, therefore, when the present applicant is charged for the offence under Section 302, 307, 147, 148 etc. of IPC, then he does not deserve to be released on bail. As aforesaid and at the costs of repetitions, the Court cannot be blamed for the delay that has been caused. But, taking into consideration the fact that for more than 3 ½ years, the applicant is in jail, once again, directions are required to be given to the concerned Court by making the trial time-bound so that balance can be struck in the rights of the present applicant and also the right of the prosecution. With these observations, following order is passed, -

ORDER

i. The Bail Application stands rejected.

ii. The learned District Judge-3 and Additional Sessions Judge, Jalgaon is hereby directed to expedite the Sessions Case No.30/2018, which is now made time-bound. If possible, the learned Judge to take the matter on day-to-day basis after the pandemic situation gets recovered. He should try to get the presence of the under-trials secured as far as possible physically or he may consider option of

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holding the trial through VC for them.

iii. Intervening applications, if any, filed by any co-accused be disposed of as early as possible so as to not to hamper the smooth functioning of the trial.

iv. The learned Additional Sessions Judge is directed to conclude the trial by the end of 30th October, 2021.

v. Liberty is granted to the present applicant to file an application for bail if the trial does not get concluded after 30th October, 2021.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV