

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO. 756 OF 2021

Kailash s/o Vilas Mane Applicant

Versus

The State of Maharashtra Respondent

Mr. N.S.Ghanekar, Advocate for the applicant.
Mr. P.G. Borade, APP for respondent/State.
Mr. Yogesh Lagad, Advocate for respondent No. 2.

WITH
BAIL APPLICATION NO. 667 OF 2021

Gorakh Datta Gaikwad Applicant

Versus

The State of Maharashtra Respondent

Mr. Umesh B. Gitte, Advocate for the applicant.
Mr. P.G. Borade, APP for respondent/State.
Mr. Yogesh Lagad, Advocate for respondent No. 2.
Mr. N.V. Gaware, Advocate for the informant.

CORAM : M.G. SEWLIKAR, J.
RESERVED ON : 21st October, 2021.
PRONOUNCED ON : 29th October, 2021.

PER COURT :

1. Both these applications are disposed of by common order
as they arise out of the same offence.

2. Both the applicants along with other accused are being

tried for the offences punishable under Sections 302, 120(B), 143, 147, 148, 149, 212 of the Indian Penal Code and Sections 3 and 7 read with Sections 25 and 27 of Indian Arms Act..

3. It is alleged that the brother of the informant was shot dead by the applicants and other accused. They had hatched a conspiracy. Pursuant to that conspiracy, the brother of the informant was shot dead.

4. Applicant Kailash was arrested on 1st May, 2018 and applicant Gorakh was arrested on 24th September, 2020. After completion of investigation, charge-sheet came to be filed.

5. Accused Ulhas Vilas Mane had preferred application for bail. His application was rejected by this Court. Against this order accused Ulhas Vilas Mane preferred Spl. Leave to Appeal (Cri.) No. 10674 of 2019 before the Hon'ble Supreme Court. Hon'ble Supreme Court rejected the application and directed that the trial be completed within a period of one year. Since trial could not be completed within one year, accused Ulhas Vilas Mane preferred application to the Honourable Supreme Court being Special Leave to

Appeal (Cri.) No.4243/2021. The Honourable Supreme Court passed the following order :

“It is not in dispute that the petitioner has been in custody for the last three years and three months. Eight co-accused have already been granted bail and the Chargesheet has already been filed. Though the direction was given by the High Court for speedy disposal of the case, the trial has not been completed so far.

Having regard to the totality of facts and circumstances of the case, we are of the view that this is a fit case for grant of bail to the petitioner.

Therefore, we direct release of petitioner Prakash Vilas Mane, on bail subject to terms and conditions to be imposed by the Trial Court.

The Special Leave Petition is disposed of in the above terms.

Pending interlocutory application(s), if any, shall stand disposed of.”

6. Shri Ghanekar, learned counsel for the applicants submits that both the applicants also are in custody for more than three years. Though the trial has been directed to be completed within one year, it is still not completed. The Honourable Supreme

Court, therefore, directed the accused to be released on bail. He submits that both the applicants stand on the same footing. He submits that if entire charge-sheet is perused and entire evidence recorded by the prosecution is perused, it would reveal that there is no disparity between the role of accused Prakash (to whom bail has been granted by the Honourable Supreme Court) and the role of both the applicants.

7. Learned App Shri Borade concedes that the role of both the applicants and accused Prakash is the same. However, he opposes the application for bail on the ground that the applicants do not stand on the same footing with accused Prakash. Shri Gaware, learned counsel for the informant submits that the trial is on the verge of completion. Only police officers are to be examined. Therefore, applicants should not be released on bail. Learned counsel Shri Ghanekar countered the argument contending that the role of both the applicants is the same. When the Honourable Supreme Court has released one of the accused on bail and all the other accused are on bail, liberty of the present applicants cannot be curtailed.

8. I am in agreement with the submissions made by learned counsel Shri Ghanekar. Trial is not completed within the specified period. Therefore, liberty of the applicants cannot be curtailed. In this view of the matter, I deem it appropriate to release the applicants on bail in view of the order of the Honourable Supreme Court. Hence the following order :-

ORDER

- i) Both the applications are allowed.
- ii) Kailash s/o Vilas Mane, applicant in Bail Application No. 756/2021 and Gorakh Datta Gaikwad, applicant in Bail Application No. 667/2021 be released on PR Bond of Rs. 1,00,000/- (Rs. One Lac) each with one solvent surety each in the like amount in connection with Crime No. 75/2018 registered at Jamkhed Police Station, Dist. Ahmednagar, for the offences punishable under Sections 302, 120(B), 143, 147, 148, 149, 212 of the Indian Penal Code and under Sections 3 and 7 read with Sections 25 and 27 of the Indian Arms Act, on condition that they shall not influence the witnesses and shall not tamper the prosecution evidence.
- iii) Applicants shall not leave the country without the permission of the Court.

iv) They shall deposit their passport with the concerned police station.

v) Both the applications stand disposed of.

vi) It is clarified that the observations made in the above order are restricted to the decision of these applications only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

(M. G. SEWLIKAR)
Judge

dyb