

NSC.

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL BAIL APPLICATION NO.287 OF 2020

Bapu Appa Mangave

...Applicant

Versus

The State of Maharashtra and Anr.

...Respondents

Mr. Sanjeev Kadam i/b Mr. Tushar L. Pimple, for the Applicant.

Mr. P. H. Gaikwad-Patil, A.P.P for the Respondent No.1 – State.

Mr. Vijay Killedar, for the Respondent No.2/Original Complainant.

CORAM : REVATI MOHITE DERE, J.

DATE : 10th MARCH, 2021

P.C. :

1 Heard learned counsel for the parties.

2 This is the third bail application preferred by the applicant. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 59 of 2015 registered with the Shirol Police Station, Kolhapur, for the alleged offences punishable under Sections 302, 504, 506 r/w 34 of the Indian Penal Code.

3. Learned Counsel for the applicant submits that the applicant is in custody since 2015. He submits that this Court vide order dated 2nd May, 2016, in the first bail application preferred by the applicant had granted

liberty to the applicant to file a fresh application, if the trial did not conclude within a reasonable time. He submits that till date there has been no progress in the trial. He submits that the applicant is about 73 years of age. He further submits that the applicant is alleged to have assaulted the deceased with fist and kick blows and that no weapon was used in the commission of the offences.

4. Learned Counsel for the applicant has tendered an affidavit-cum-undertaking of the applicant stating therein that he will stay out of Kolhapur District and will not enter the jurisdiction of Kolhapur District, except for attending the trial Court on the dates given by the trial Court, till the conclusion of the trial and that he will not tamper or threaten any of the witnesses in the said C.R. The said affidavit-cum-undertaking is taken on record.

5. Learned APP opposed the application. She has filed an affidavit of Navnath N. Sul, Police Sub Inspector, presently attached to Shirol Police Station, Taluka Shirol, District - Kolhapur, for opposing the said application.

6. Learned counsel for the respondent No.2/original complainant also opposed the application. He submits that there is one child witness and two other young witnesses, who had seen the incident and that the said witnesses apprehends danger to their lives.

7. Perused the papers. The applicant's first bail application was disposed of as withdrawn vide order dated 2nd May 2016, passed in Criminal Bail Application No.149 of 2016. The said order dated 2nd May 2016 reads as under:-

“1. After arguing for some time, learned Counsel for the applicant seeks leave to withdraw the application with liberty to file a fresh application after passage of some time.

2. Accordingly, the application is disposed of as withdrawn with liberty as prayed.

3. It is made clear that if, for no fault of the applicant, the trial does not conclude within a reasonable time, the applicant is at liberty to file a fresh application, which will be considered on its own merits, uninfluenced by the withdrawal of this application.”

8. Perused the liberty granted by this Court to file a fresh application, if the trial did not conclude within a reasonable time, for no fault of the applicant, the applicant within 6 months filed a second bail application being Criminal Bail Application No.1663 of 2016. This Court (Coram:Revati Mohite Dere, J.) vide order dated 16th November 2016,

rejected the said application on merits. However, the trial of the applicant was expedited. Till date, not a single witness has been examined. Charge was framed in the said case on 20th August 2018. The applicant, aged 73 years, as of today is in custody for more than 5 years. It appears that the complainant and the deceased on one hand and the applicant and other co-accused on the other, are related and that there are civil disputes pending between the parties. It appears that the complainant and the deceased have succeeded in a civil suit, however, the accused refused to give a road in the disputed suit land. The incident is alleged to have taken place on 2nd September 2015 at about 4:00 – 4:15 p.m. It appears that the applicant along with his two sons Rahul and Ravindra was seen assaulting the deceased with fist and kick blows. The applicant is also alleged to have kicked the deceased on his private part. One of the accused i.e. Rahul Mangave is also alleged to have twisted the private part of the deceased. The said incident was witnessed by several witnesses including the 3 minor witnesses. Two out of three, are now major. No doubt, *prima facie* there is material *qua* the applicant, but the fact remains that the applicant, aged 73 years (Aadhar Card) is in custody for more than 5 years and that till date, the trial has not commenced, despite expediting the same vide order dated 16th November 2016. The applicant has filed an affidavit-cum-undertaking today. In the said affidavit-cum-undertaking the applicant has undertaken

not to tamper or threaten any of the witnesses in the said C.R. He has also undertaken to stay out of Kolhapur District and that he would not enter the jurisdiction of Kolhapur District, except for attending the trial Court on the dates given by the trial Court, till the conclusion of the trial. He has also undertaken to attend the concerned police station, as may be directed by this Court.

9. Having regard to what is stated hereinabove and the affidavit-cum-undertaking filed by the applicant, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

- i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 25,000/- with one or two local solvent sureties in the like amount;
- ii) The applicant shall not enter the jurisdiction of the Kolhapur District, except for the purpose of attending the trial Court;
- iii) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the

Court seized of the matter and to the Investigating Officer of the concerned Police Station;

iv) The applicant shall not tamper with the evidence or attempt to contact/influence/intimidate/threaten the complainant, witnesses or any person concerned with the case;

v) An undertaking to the aforesaid clauses (ii) to (iv), shall be filed by the Applicant, in the trial Court, within two week's of his release;

vi) If there are 2 consecutive defaults either in attending the Police Station or in appearing before the trial Court, the prosecution will be at liberty to apply for cancellation of Applicant's bail.

10. It is made clear, that the other accused will not take benefit of the order passed in the aforesaid bail application.

11. The Application is allowed and disposed of in above terms. Having regard to the fact that the case is of the year 2015, the learned Judge to conclude the case, as expeditiously as possible and in any event

within 12 months from the date of receipt of this order.

12. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

13. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.