

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

**BAIL APPLICATION NO.2590 OF 2021
WITH
INTERIM APPLICATION NO.1905 OF 2021
AND
INTERIM APPLICATION STAMP NO.2356 OF 2020**

Uneb Nasir Kewal .. Applicant

Versus

State of Maharashtra .. Respondent

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Mr.Nouman Shaikh i/b. Ms.Anjali Patill, Advocate for the Applicant in BA.

None for the Applicant in IA 1905 of 2021 (Through Jail)

Mr.Shailesh Kharat, Advocate for the Applicant in IAST 2356 of 2020.

Mr.Y.Y. Dabake, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 24, 2021.

P.C. :

This is an application for bail in connection with C.R.No.85 of 2018, registered with Nayanagar Police Station, Thane Rural, on 3rd February, 2018, for offences punishable under Sections 307, 436, 440, 342 read with 34 of Indian Penal Code (“IPC”, for short).

2 The case of the prosecution is that the complaint was lodged by Miss.Rufil Zuber Inamdar on 3rd February, 2018. It is alleged that at about 3:30 a.m., the complainant heard commotion from the hall of the house. Hence, she woke up and noticed that the main door of the house and the wooden showcase adjacent to the house had caught fire. Sister of the complainant also woke up and came to the hall. Both of them switched off the electrical connection and gave call to their neighbour and informed them about fire. The neighbours came to the spot and extinguished the fire. The neighbours opened the door which was closed from outside. It was noticed that the front door was completely burnt. It was further noticed that plastic bisleri bottle was found at the spot in burnt condition. The information was provided to the police. The CCTV footage is installed near the house is also verified. On verifying the CCTV footage it was noticed that at about 3:20 a.m., Asif Anwar Khan had come near the front door of the house of the complainant. He was carrying the bottle filled up with kerosene. He closed the door from outside. He poured the kerosene and with the help of lighter set the door on fire and ran away from the place of incident. It is further alleged that the father of the complainant was the local

corporator and he was protesting against alcoholics drinking in open area. Some persons used to consume alcohol on the road, behind Masjid at Naya Nagar area. The complainant's father had deprecated such behaviour and also lodged the complaint. The said persons were infuriated with the said fact and on account of the action initiated by the complainant's father, the applicant and Asif Khan were enraged. The accused had closed the door from outside and poured the kerosene on the door of house set in on fire. Role attributed to applicant is that he had aided accused no.1 to flee from place of incident after crime. The applicant was arrested on 3rd March, 2018.

3 This is the third application for bail before this Court. The first application was rejected by this Court, vide order dated 8th October, 2018. However it was directed that, in the event trial does not commence within a period of six months, the applicant was at liberty to prefer fresh application for bail before this Court. Since there was no progress in the trial, the applicant preferred another application for bail before this Court *viz.* Criminal Bail Application No.1797 of 2019. In the said application, it was contended that liberty was granted to prefer fresh application for bail in the event the trial does not commence

within a period of six months. The period of six months is over, and, there is no progress in the trial. The applicant is in custody from 2nd March, 2018. Learned APP and the learned advocate for the complainant had submitted that the first witness is under examination. The examination-in-chief of the said witness is recorded on 21st August, 2019. Learned APP, on instructions, from the officer who is present in Court submitted that the prosecution is intend to examine about 14 witnesses, and, they would be produced before the Court for examination as and when the trial Court issues directions in that regard. The Roznama of the trial Court proceedings was produced for perusal of the Court. It was also contended by the respondents that the delay in trial is not deliberate. Considering the submissions of both the sides, second application was rejected vide order dated 6th September, 2019. However, trial Court was directed to conclude the trial within a period of four months. It was also directed that, the trial Court shall make an endeavour to give priority to this case considering the fact that the accused are in custody. Both the sides were directed to co-operate with the trial Court for concluding the trial expeditiously. In the event trial is not concluded within four months, applicant was granted liberty to prefer fresh application for bail before this Court.

4 P.W.1 was examined. She is complainant. Since the trial was not concluded within stipulated time, the applicant had preferred this application in July 2020, and since then the application is pending before this Court. Vide order dated 24th September, 2020, passed in this application, it was observed that the prosecution has examined two witnesses. Last witness was examined on 6th February, 2020. The period of three months stipulated in order dated 6th February, 2020 is over in December 2019. Due to current situation, the trial was not concluded. The next date before the trial Court is 12th October, 2020. Trial Court may consider the proceeding of trial subject to circular/directions of the High Court dated 15th September, 2020. Application was adjourned to 14th October, 2020. Vide order dated 14th August, 2020, it was recorded that, learned APP has submitted that on account of pandemic and several other difficulties, the trial could not proceed. The prosecution proceeds to examine four more witnesses other than P.W.2, and, it is expected that the trial would be over within a period of two months. The submissions of the advocate for the complainant is that the witnesses were ready on the last date of hearing before the trial Court, but, due to

technical snag, the trial could not proceed. However, trial would be concluded expeditiously. This Court noted that the applicant is in custody from 2nd March, 2018, and that while rejecting the previous application, the applicant was granted liberty to prefer fresh application for bail. The prosecution as well as the defence witnesses were directed to co-operate with the trial Court to conclude the trial. Considering the submissions of learned APP, the application was adjourned for a period of two months. It was further observed that in the meantime, it is expected that the trial would be concluded expeditiously. The application was adjourned to 21st December, 2020. The application came up for hearing on 21st December, 2020 and the order passed on that day indicate that learned APP, on instructions, has submitted that the prosecution has so far examined three witnesses and the prosecution proposes to examine about 4 to 8 witnesses. In view of submissions, the application was adjourned to 11th January, 2021. Thereafter, the application came up for hearing on 3rd August, 2020, and, it was adjourned at the request of learned APP to 18th August, 2020.

5 Learned advocate for the applicant submitted that in spite of directions to conclude the trial, it was not concluded.

The applicant is in custody from 2nd March, 2018. He is in jail for a period of about more than three years. No active role is attributed to the applicant. It is alleged that the applicant had assisted accused no.1 to flee from the place of incident on a two wheeler driven by the applicant. He cannot be kept in custody for indefinite period.

6 Learned APP submitted that the prosecution has so far examined five witnesses and summons was issued to three more witnesses. The trial would be concluded within a short span of time. The prosecution has not delayed the trial. There are four criminal antecedents against the applicant. Learned counsel for the intervenor/complainant submitted that the trial would be over within short span of time. The complainant has co-operated with the trial. Five witness are already examined. Specific role has been attributed to the applicant.

7 It is pertinent to note that the applicant is in custody from 2nd March, 2018. The case of the prosecution is that co-accused had tried to set the house of the complainant on fire. The applicant was allegedly present at the scene of the offence and the CCTV Footage indicate that the applicant had aided co-

accused to flee from the place of incident. From the orders dated 8th October, 20018 and 6th September, 2019, it can be seen that the direction were issued to conclude the trial expeditiously. The applicant was granted liberty to prefer fresh application for bail, if the trial does not commence within six months vide order dated 8th October, 2019. Thereafter, vide order dated 6th September, 2019, liberty was granted to the applicant to prefer application for bail in the event trial is not concluded within four months. The initial period of six months as well as the subsequent period of four months is already over. This application is pending in this Court since last one year. Considering the submissions of the respondents, from time to time application was adjourned with directions to conclude the trial. The fact remains that trial not yet concluded. The prosecution intends to examine about five more witnesses. The applicant is in custody for a period of about 3 years and five months. In this peculiar circumstances and considering the role attributed to the applicant, further detention of the applicant is not warranted. Case for grant of bail is made out.

:: ORDER ::

- (i) Bail Application No. 2590 of 2021, is allowed;

- (ii) Applicant is directed to be released on bail in connection with C.R.No.85 of 2018, registered with Nayanagar Police Station, Thane Rural, on executing P.R. Bond in the sum of Rs.25,000/-, with one or more local sureties in the like amount;
- (iii) Applicant shall stay out of the jurisdiction of Nayanagar police station, till the conclusion of trial;
- (iv) Applicant is permitted to furnish provisional cash bail in the sum of Rs.25,000/-, for a period of 10 weeks, in lieu of surety;
- (v) Applicant shall attend trial Court regularly on the date of hearing of the case, unless exempted by the Court and shall co-operate in concluding the trial expeditiously;
- (vi) Applicant shall not tamper with the prosecution evidence;

- (vii) Bail Application 2590 of 2021, stands disposed of accordingly;
- (viii) Interim Application No.1905 of 2021 and Interim Application Stamp No.2356 of 2020, stand disposed of.

(PRAKASH D. NAIK, J.)