

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

BAIL APPLICATION NO.1216 OF 2022  
WITH APPLN/2707/2022 IN BA/1216/2022

Dnyaneshwar @ Nana Madhukar Rathod,  
Age 22 years, Occu. Student,  
R/o. Sayyad Nagar, Taluka Sakri,  
District Dhule.

.. Applicant

Versus

The State of Maharashtra  
Through Police Station Officer,  
Sakri Police Station, Taluka Sakri,  
District Dhule.

.. Respondent

Mr. Mohit S. Shah, Advocate for Applicant;  
Mr. S. B. Narwade, A.P.P. for Respondent/State;  
Mr. Joydeep Chatterji, Advocate for Complainant

**CORAM : S. G. MEHARE, J.**

**DATE : 15-11-2022**

**PER COURT :-**

1. Heard the learned counsel for the applicant, the learned A.P.P. for the respondent/State and the learned counsel for the complainant.

2. The applicant is seeking bail under Section 439 of the Code of Criminal Procedure in Crime No. 68 of 2016 registered with Sakri Police Station, District Dhule, for the offence punishable under Sections 302, 143, 147, 148, 149, 323, 504, 506 read with Section 34 of the Indian Penal Code.

3. The applicant has been arraigned as an accused of the offence of murder. He was arrested six years back, and the trial has begun. Earlier, bail applications of the applicant have been rejected. The charges were framed on 05.03.2021. On 05.01.2022, summonses were issued. The last witness was examined on 05.11.2022.

4. The applicant is claiming bail mainly on the ground that there was no effective progress in the trial. The other co-accused have been released on bail. The other grounds raised on the facts are immaterial, as those were considered in the earlier orders.

5. The learned counsel for the applicant has vehemently argued that there is no material progress in the trial. The applicant has been languishing behind the bar for six years. Therefore, in view of the opinion expressed by the Hon'ble Supreme Court in the case of *Chintan Vidyasagar Upadhyay Versus The State of Maharashtra, Petition for Special Leave to Appeal (Cri.) No. 2543 of 2021 (Arising out of impugned final judgment and order dated 21.12.2020 in CRLBA No.3615 of 2019 passed by the High Court of Judicature at Bombay) dated 17.09.2021*, that though few witnesses have remained to be examined, the applicant may be released on bail.

6. The learned counsel for the applicant has also relied on the order passed by this Court (Coram: Prakash D. Naik, J.) in a case

*Ajit Bhagwan Tiwde Versus State of Maharashtra, Bail Application No. 995 of 2021, dated 19.01.2022.* Referring to the copies of the Roznama of the trial, he has tried to convince the Court that the trial will not be concluded in the near future.

7. The learned A.P.P. for the respondent/State and the learned counsel for the complainant have opposed the application contending that there is a material progress in the trial. The learned trial Court has issued a letter to the C.A. to produce the muddemal property. The Court has taken proactive action. The eyewitnesses are likely to be examined. The complainant has an apprehension of danger at the hands of the applicant. It has also been vehemently argued that on the last date, one witness was present in the Court. However, the muddemal property was lying with C.A. Office, Nashik. Hence, prosecution could not examine him. The learned Sessions Court has passed a detailed order on the point, why the witnesses have not been examined on 05.11.2022. They have prayed to reject the bail application.

8. The Hon'ble Supreme Court, in a case of *Union of India Verses K. A. Najeeb, (2021) 3 SCC 713* and *Shaheen Welfare Association Versus Union of India and others, (1996) 2 SCC 616*, had granted the bail on the ground that accused was in jail for six years and also on the basis of evidence adduced before the trial Court.

9. The law is well settled that the under trials prisoners should not be languished in jail for years together while the trial proceeds at the snail's pace. In the case of *Shaheen Welfare Association (supra)*, the Hon'ble Supreme Court observed that, it was necessary to grant relief to those persons who have been deprived of their personal liberty for a considerable length of time without any prospects of trial being concluded in the near future. It has also cautioned that the bail can be granted unless the Court come to the conclusion that there was no apprehension that releasing the accused may be harmful to the complainant, family members of the complainant or witnesses.

10. The learned counsel for the applicant has correctly pointed out that in the case of *Hussainara Khatun Versus State of Bihar, (1995) 5 SCC 326*, it has been observed that sympathy for the under trials who are in jail for long time on account of the pendency of the cases, has to be balanced having regard to the impact of crime.

11. The Division Bench of this Court in Criminal Appeal No. 389 of 2020 in the case of *N.I.A. Vs. Areeb Ejaz Majeed (supra)* has observed that in cases under Special Acts, parameters for granting bail are more stringent, and they remain in custody. The courts are required to perform a balancing act so as to reach a golden mean between the rights of an individual and those of society at

large. The Court has to look into those aspects while granting bail, even on the ground that the undertrial is in prolonged custody.

12. Considering the law laid down by the Hon'ble Apex Court, it is to be examined whether there are possibilities of disposal of the case in the near future.

13. The applicant is undoubtedly languishing in jail for six years. Till the case was opened, he never applied to the Sessions Court to open the trial or also did not apply to the Court for segregating his trial when the co-accused were not cooperating. As soon as the witnesses went back and a few witnesses were examined, the applicant approached this Court. Around five witnesses have been examined. Material placed on record does not reflect that the trial has been prolonged at the cause of the prosecution. Sometimes the hearing was adjourned for the reasons of the non-production of the accused from the jail in the Court, the filing of the interim relief applications by the accused and the absence of some of the accused. From the *roznamas*, it may not be inferred that the trial has deliberately not progressed. As far as the injured and the complainant are concerned, they have no role to play in the trial unless they have been called for on summons. On the contrary, it appears that the Trial Court proactively called the muddemal property from the C.A. The Court may dispose of the case at the earliest if all parties cooperate with the Court. If the other

co-accused do not cooperate, the applicant can seek a separate trial. The apprehension expressed by the complainant that the applicant may tamper with the eyewitnesses and danger at the hands of the applicant to the prosecution witnesses cannot be ruled out. Hence, Court is of the view that the prayer of the applicant for releasing him on bail on the ground mentioned in the application cannot be granted. For the above reasons, the application stands dismissed.

14. Criminal Application No.2707 of 2022 stands allowed.

**( S. G. MEHARE )  
JUDGE**

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