

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
BAIL APPLICATION NO.511 OF 2021**

Abhijit Anant Bhosale .. Applicant  
**Versus**  
The State of Maharashtra .. Respondent

**WITH  
INTERIM APPLICATION (ST) NO.19578 OF 2022**

Kishor Ratilal Dhakan .. Applicant  
**Versus**  
The State of Maharashtra & Anr. .. Respondents

**WITH  
INTERIM APPLICATION NO.3074 OF 2022**

Abhijit Anant Bhosale .. Applicant  
**Versus**  
The State of Maharashtra .. Respondent

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Ms.Swapna Kode for the Applicant.

Mr.S.V.Gavand, A.P.P. for the State/Respondent.

Mr.Rizwan Merchant with Mr.Swapnil Wagh and  
Ms.Samruddhi Shinde for the Complainant.

Mr.Pravin More, ACP (Retd.), Borivali Police Station, present.

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**CORAM: BHARATI DANGRE, J.  
DATED : 24<sup>th</sup> NOVEMBER, 2022**

**ORDER:-**

1. Heard learned counsel Ms.Swapna Kode representing the applicant, on her appointment through this Court as the applicant is presently incarcerated. I have also heard learned A.P.P. Mr.Gavand for the State and the learned counsel Mr.Rizwan Merchant for the Intervenor/Complainant.

2. The applicant is facing trial in C.R.No.174 of 2012 registered with Borivali Police Station, which invoke Sections 365, 302, 201, 420, 457, 465, 468, 471, 380, 364, 342, 404, 392 read with Section 34 of IPC.

The prosecution allege that one Nitin Dhakan was done to death by the six accused persons, by kidnapping him in order to gain financial advantage. It is alleged that said Nitin was kidnapped along his vehicle and after eliminating him, two of the co-accused approached the house of the deceased, opened the flat and told the watchman that they had come to inspect the POP work and, thereafter, they left the premises. It is alleged that cash amount was stolen from the said premises and according to the prosecution, the whole act is committed as an act of conspiracy.

3. As far as the present applicant is concerned, he is charged as accused No.5 and the charge-sheet alleges that in order to give effect to the conspiracy, the applicant had purchased the petrol can as well as the petrol and a new mobile to use the SIM card of the deceased and during investigation, he led to the places from where he had

purchased the said material. Apart from this, it is alleged that the applicant is the person from whom the key of the flat of the deceased was recovered under Discovery Panchanama recorded under Section 27.

The prosecution alleges the brutality in commission of the crime and it is submitted that by use of the credit cards, the accused persons purchased some clothes and the evidence to that effect has been compiled in the charge-sheet.

4. The aforesaid charges resulted in Sessions Case No.161 of 2017, which is pending before the learned Additional Sessions Judge, Dindoshi.

Three applications were filed by three accused in the said case, seeking their release on bail on the ground of long incarceration.

On 04/10/2022, on noticing that the trial has not concluded and when it was scheduled for recording statement of the accused under Section 313 of Cr.P.C., the prosecution had filed an application for examining the additional witnesses and the application was allowed, I called for the report from the learned Additional Sessions Judge, Dindoshi, explaining the circumstances and also justifying the order of separating the trial of the present applicant. Accordingly, a report is placed before me and the position that emerges is to the effect that the applicant was granted pardon under Section 306 of the Cr.P.C. on 19/09/2016 and he was treated as 'Approver', however, when he stepped into the witness box on 12/11/2021, he did not support the case of the prosecution and, hence, the

learned Special Public Prosecutor (SPP) subjected him for cross-examination. He, thereafter, submitted certificate under Section 308, since the applicant resiled from the pardon by willfully concealing essential of crime and by giving false evidence and, since, he failed to fulfill the condition on which, he was granted pardon. Therefore, permission was sought to restore his position as an accused. Accordingly, the learned Additional Sessions Judge treated him as an accused and his trial came to be separated from that of other accused.

5. On noticing the fate of the present applicant, since his trial was separated, which made it imperative for the prosecution to commence the trial de-novo, the following direction came to be issued as regards the applicants/accused in two bail applications by order dated 19/10/2022:-

“8] As far as other two Applications are concerned, the learned APP has made a specific statement that 29<sup>th</sup> witness i.e. the Investigating Officer is in the dock and his examination is scheduled on 21.10.2022. It is also submitted that after his examination is over, another Investigating Officer, the 30<sup>th</sup> witness of the prosecution would also be examined.

It is made clear that the learned Judge shall earnestly proceed with the examination of these two witnesses and record evidence of 29<sup>th</sup> witness on 21.10.2022 and immediately schedule the trial for further proceedings on re-opening of the Court after Diwali Vacation.

In any case, examination and cross-examination of these witnesses shall be concluded on or before

05.11.2022. Immediately thereafter, from 07.11.2022 the Court shall start recording statements of accused under Section 313 of the Cr.P.C.

9] The prosecution agency shall ensure presence of accused persons, who are in custody, on the said dates and the Court shall conclude with the recording of statements on or before 11.11.2022. In the week commencing 14.11.2022 to 16.11.2022.

Thereafter, arguments shall be heard forthwith.

With this time bound programme being chalked out, the Sessions Court, shall conclude the trial on or before 30.11.2022.

10] ... ..

11] In the wake of above BA No.2684/2022 and 2669/2022 are disposed off.”

6. Though the learned counsel Ms.Kode has pressed into service the ground of long incarceration and admittedly it is almost a decade, since the applicant is in custody, but in my considered opinion, for this consequence, he must blamed himself, as while under cross-examination as a ‘Approver’, he rescinded from his statement and was declared hostile, and as a result, now deserve to be tried de novo, whereas the trial in respect of other accused persons is directed to be concluded by 31/11/2022.

Looking to the seriousness of the accusations levelled in the charge-sheet and, particularly, against the present

applicant, it can be discerned that his role is clearly surfacing through the charge-sheet and the prosecution has, prima facie, collated material to establish that he has also participated in the gruesome incident of doing the deceased to death, for a petty reason of extracting money. The applicant has led to the key of the house of the deceased, since it is the allegation of the prosecution that after doing him to death, the accused persons gained entry into the house and took some money from the house. The body of the deceased has been burnt and thrown in a deserted area in order to destroy the evidence. The material collated against the accused persons establish the diabolic and gruesome offence, which is attributed to them, including the present applicant, who is charged as accused No.5.

7. It is pertinent to note that from the date of commission of the offence in the year 2012, the applicant was absconding and he was arrested on 13/06/2012. Separate proceedings are instituted against him for perjury and in this background, the apprehension expressed by the prosecution as well as by the learned counsel Mr.Merchant that he shall not make himself available for the trial, if released on bail, and, particularly, at a stage, if the other accused persons are convicted for the offences with which they are charged, cannot be said to be without any substance. In a contingency, if the co-accused are acquitted of the charges at the end of the trial, it is in all probability that the applicant would also make an endeavour to obtain an order of acquittal and may tamper with the prosecution case.

8. The learned SPP has submitted a report to the Court, which is placed before me, and it is stated that as far as the trial of the present applicant is concerned, 16 to 18 witnesses would be examined and the learned SPP has also highlighted before me that the applicant has preferred multiple applications during the trial and this has caused delay in conclusion of the trial. The learned SPP has assured that the prosecution would make an attempt to conclude the trial within a reasonable time, but his release at this stage, when he is charged for heinous offence, should not be permitted.

9. I am in the agreement with the learned APP Mr.Gavand, though conscious of the fact that by long incarceration, the applicant is deprived of his fundamental right to secure his liberty, when the prosecution has failed to conclude the trial and he remained incarcerated almost for a decade. In the aforesaid circumstances, I deem it appropriate to strike a balance between the right of the applicant on one hand and the apprehension of the prosecution and the complainant, of the applicant not making himself for trial, in case he is released on bail, by directing the learned Additional Sessions Judge presiding over Court Room No.10, Dindoshi, Mumbai to conduct the trial of the present applicant on day-to-day basis by flagging it as of utmost importance and treating it as of "top most priority". The learned Judge is requested to prepare the calendar of the trial, within a period of eight days from today and proceed with the trial on day-to-day basis, by issuing the summons to the witnesses in advance. In case, any of the witness like the Investigating Officer is posted at some other

station, it would be permissible for the learned Judge to record the evidence via video conferencing. In any case, every endeavour shall be made to conclude the trial on or before 31/03/2023.

In case of failure to conclude the trial of the applicant within the framed timeline, the applicant is at liberty to renew his request for release on bail on the ground of long incarceration.

The application is rejected with the above directions.

10. In view of the disposal of the application, interim applications do not survive and stand disposed off.

**( SMT. BHARATI DANGRE, J.)**