

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

CRIMINAL BAIL APPLICATION NO. 311 OF 2020

Sudhakar Jayram Nadar	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. T. R. Patel for the Applicant

Ms. P. P. Shinde, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.

FRIDAY, 1st JULY 2022

P.C. :

1 Heard learned counsel for the parties.

2 This is the second bail application preferred by the applicant, seeking his enlargement on bail in connection with C.R. No. 386/2016 registered with the MHB Colony Police Station, Mumbai, for the alleged offence punishable under Sections 302 and 504 of the Indian Penal Code.

3 Learned counsel for the applicant submits that the applicant's first bail application was rejected on merits by this Court (Coram : Revati Mohite Dere, J.) vide order dated 16th April 2018. He submits that till date, there is no progress in the trial inasmuch as, not a single witness has been examined by the prosecution. Learned counsel for the applicant has tendered a copy of the Roznama of the trial Court. The same is taken on record and a copy thereof is served on the learned A.P.P. Learned counsel for the applicant submits that a perusal of the Roznama will indicate that the trial has not been delayed at the behest of the applicant. He further submits that the applicant is languishing in custody since 2016, for almost 6 years. He further submits that it is a case of single blow and at the highest, the applicant would be liable for a lesser offence and not for the offence punishable under Section 302 of the Indian Penal Code.

4 Learned A.P.P does not dispute the fact that the delay in the commencement of the trial has not occasioned because of the applicant.

5 Perused the papers. The applicant's first bail application was rejected on merits by this Court vide order dated 16th April 2018. The said

order is at page 74 at Exhibit `C' of the application. The applicant is the brother-in-law of deceased-Annaparvati Suresh Nadar. It is the prosecution case that there was a property dispute between the family members, pursuant to which, the applicant assaulted the complainant's wife-Annaparvati with a spade on her head, when she was washing her clothes, on 19th November, 2016, at about 10.00 a.m. The cause of death is head injury. With a single blow given by the applicant, the deceased succumbed to the said injury and was declared dead, on being taken to the Hospital.

6 The applicant's first bail application was rejected on merits and the same is recorded in the order dated 16th April 2018. It appears that on 8th February 2019, charge was framed in the said case as against the applicant. Admittedly, till date, not a single witness has been examined in the said case. The applicant is in custody since his arrest i.e. since 2016. Passage of time is a change of circumstance for entertaining a subsequent bail application. A perusal of the Roznama tendered by the learned counsel for the applicant shows that the applicant is not responsible for the delay in the trial.

7 Considering the aforesaid, and the fact that the applicant is in custody since 2016 and the prospect of the trial commencing in the immediate near future is bleak, application is allowed and the applicant is enlarged on bail in connection with C.R. No. 386/2016 registered with the MHB Colony Police Station, Mumbai, 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 sureties in the like amount;

- (ii) The applicant shall attend the concerned Police Station on the first Saturday of every month between 10:00 a.m. to 12:00 noon, till the conclusion of the trial;

- (iii) The applicant shall not enter the jurisdiction of MHB Colony Police Station, Mumbai, except for the purpose of attending the police station;

(iv) 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;

(v) The applicant to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;

(vi) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(vii) The applicant shall file an undertaking with regard to clauses (ii) to (vi) in the trial Court, within two weeks of his release;

(viii) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8 The application is disposed of in the aforesaid terms.

9 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.

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

REVATI MOHITE DERE, J.