

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

**BAIL APPLICATION NO.894 OF 2020**

Kadresh @ Kutty Mutthaya Periyar .. Applicant

***Versus***

State of Maharashtra .. Respondent

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Mr.Sudeep Pashbola a/w. Mr.Karl Rushomkhan i/b. Mr.Rahul Arote,  
Advocate for the Applicant.

Mr.Arfan Sait, APP for the Respondent – State.

Sr.P.I. Hatiskar, Colaba Police Station, Mumbai, present.

PSI Rasam, Malad Police Station, Mumbai, Present.

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**CORAM : PRAKASH D. NAIK, J.**

**DATED : FEBRUARY 15, 2022.**

**P.C. :**

This is a second application for bail. The previous application was rejected by this Court vide order dated 28<sup>th</sup> January, 2019.

2           The case of the prosecution is that on 16<sup>th</sup> June, 2016, Malad Police Station, Mumbai, received message that one person is being assaulted and hence they proceeded at the place of incident. The injured Jayram Nadar was admitted in Shatabdi Hospital. There was

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assault by unknown person. Statement of son of Jayram Nadar was recorded. The deceased was the Secretary of Shantivinayak Mandir and Member of Dharavi Nadar Samaj Society. On 14<sup>th</sup> April, 2016, he had raised objection for construction of Vachnalaya near Om Shakti Vinayak Mandir. On 16<sup>th</sup> June, 2016, complainant was informed that his father has been injured. His uncle proceeded to hospital and learnt that unknown persons have assaulted the deceased.

3                      Learned advocate for the applicant submitted as follows:

- (i)     The applicant is in custody from 12<sup>th</sup> July, 2016. He has undergone custody for about 5 and ½ years;
- (ii)    Trial has not commenced. Even charge has not been framed;
- (iii)   It is not clear as to when the trial would be concluded. The applicant cannot be kept in custody for inordinate period;
- (iv)    The co-accused Robin Suresh Rajamani Harijan @ Suresh Nadar has been granted bail by this Court *vide* order dated 28<sup>th</sup> January, 2021. The previous application preferred by the said co-accused was withdrawn;
- (v)    No role of assault is attributed to the applicant. The prosecution relying upon the evidence of CCTV Footage, which at the most

shows the fact that the applicant was allegedly following the deceased;

- (vi) By relying upon the Roznama of the proceedings, it is submitted that the applicant has not delayed the trial.

4            Learned APP submitted that the previous application preferred by the applicant was rejected on merits. There is no change in circumstance. The Roznama and report submitted by the trial Court would indicate that the delay had occurred on account of absence of accused on non production of the accused. Charge could not be framed because the accused were not present before the Court. There is strong evidence against the applicant showing his involvement in the crime. Merely on the ground that there is delay in trial, bail cannot be granted to the accused. He relied upon report submitted by the trial Court and the Roznama, and, urged that several applications were preferred by the accused for bail, and, on most of the occasion, the accused who are on bail were not present before the trial Court. The offence is of serious nature. He relied upon the decision of the Apex Court in the case of *State of Maharashtra Vs. Champalal Panjaji Shah*<sup>1</sup>; *Ash Mohammad Vs. Shivraj Singh alais Lalla Babu and Another*<sup>2</sup>; *Mangal Singh and Another Vs. Kishan Singh*

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1    1981 (3) SCC 610

2    (2012) 9 SCC 446

*and Others*<sup>3</sup>; *Ranjan Dwivedi Vs. Central Bureau of Investigation*<sup>4</sup>; *and Ashok Pundalik Gavade Vs. State of Maharashtra*<sup>5</sup>. Learned APP submitted that in the light of the observations in the said decisions, merely on account of delay in trial, the Court cannot reject the bail, and, the Court is required to consider the nature of crime, magnitude, criminal antecedents of the accused etc.

5           It is not in dispute that this is a second application for bail before this Court. The previous application was rejected on merits. The applicant is in custody for a period of about 5 and ½ years. Undisputedly, the charge has not been framed. Considering the fact that the applicant is in custody from the 12<sup>th</sup> July, 2016, the report from trial Court was called with regards to the status of trial. Trial Court has submitted the report dated 4<sup>th</sup> February, 2022. The report indicate that the proceedings in the present matter were transferred to the learned Judge on 4<sup>th</sup> December, 2021. The case was listed for framing charge. The accused who were in jail were not produced. The record of the supplementary charge-sheet is pending before the other Court, which is not yet transferred to the said Court. There are eight accused in the case. Initially the charge-sheet was filed against four accused on 4<sup>th</sup> December, 2016. Supplementary charge-sheet was filed

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3   (2009) 17 SCC 303

4   (2012) 8 SCC 495

5   2019 ALL MR (Cri.) 1866

on 8<sup>th</sup> February, 2017, and, another supplementary charge-sheet was filed on 5<sup>th</sup> January, 2018. Thereafter, on 21<sup>st</sup> August, 2020, another supplementary charge-sheet was filed. The accused had preferred applications for bail, which was heard. Charge could not be framed.

6           Undisputedly, the applicant has not been assigned role of assault on the deceased. The applicant was allegedly the conspirator in the crime. Co-accused Robin Suresh Rajamani Harijan @ Suresh Nadar had preferred an application for bail before this Court. Vide order dated 14<sup>th</sup> August, 2018, the applications were allowed to be withdrawn. The order indicate that the Court was not inclined to grant bail to the said accused. However, liberty was given to file fresh application for bail before the trial Court, if the trial does not commence within a period of one year. The said accused then preferred another application before this Court viz. Criminal Bail Application No.1676 of 2020. The application was allowed by order dated 28<sup>th</sup> January, 2021. The said accused was arrested on 21<sup>st</sup> September, 2017. Apparently, the application was allowed on the ground of discrepancy in the test identification parade. Learned APP has contended that the order granting bail to the said accused can be distinguished. However, the fact remains that he was the assailant, and, his previous application was withdrawn since the Court was not

inclined to grant bail. The applicant is in custody. From the report submitted by the trial Court and the Roznama, it can be seen that the applicant cannot be attributed role of causing delay in the trial. It is true that some of the accused had preferred applications for bail in that who are on bail were not present on some occasion. The fact remains that the charge could not be framed and the applicant is in custody for about five and half years. The person who had been attributing role of assault has been granted bail by this Court. In view of the above, this application can be allowed.

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Hence, I pass the following order:

**:: ORDER ::**

- (i) Bail Application No.894 of 2020, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.288 of 2016, registered with Malad Police Station, Mumbai, on furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more solvent local sureties in the like amount;
- (iii) Applicant shall attend Malad Police Station, Mumbai, initially for a period of six months on every Monday between 10:00 a.m. 12:00 noon, and after completion of

six months, on every first Monday of the month between 10:00 a.m. and 12:00 noon, till framing of charge, and thereafter, he shall attend the trial Court on every date of hearing, unless exempted by the Court;

- (iv) Applicant shall not tamper with the evidence and/or shall not pressurize the prosecution witnesses;
- (v) Bail Application No.894 of 2020, stands disposed of accordingly;
- (vi) Parties to act on an authenticated copy of this order.

**(PRAKASH D. NAIK, J.)**