

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

CRIMINAL BAIL APPLICATION NO. 3870 OF 2021

Vijayprasad Munshilal Nishad	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Mohamed Ahmed a/w Mr. Sufian Qureshi for the Applicant

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

API Mr. Chetan Patil from Narpoli Police Station, Thane City, is present

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 1st JULY 2022

P.C. :

1 This is the second bail application preferred by the applicant seeking his enlargement on bail in connection with C.R.No.I-498 of 2014 registered with the Narpoli Police Station, Bhiwandi, Thane, for the alleged offences punishable under Sections 302, 201, 203 and 34 of the Indian Penal Code and under Sections 37(1) and 135 of the Mumbai Police Act.

2 Learned counsel for the applicant states that the applicant is in custody since 2015, for almost 8 years, with no prospect of the trial concluding in the immediate near future. He submits that passage of time itself is a change of circumstance, inasmuch as, the applicant's first bail application i.e. Bail Application No. 2316/2018 was allowed to be withdrawn vide order dated 19th June 2019, as the Court was not inclined to enlarge the applicant on bail. He submits that the applicant has a good case on merits. He further submits that the applicant himself had sustained as many as five incised injuries on his person. He further submits that the applicant himself had gone out and was shouting for help, at which time, Ram Bahadur was alive.

3 Learned A.P.P does not dispute the fact that the trial, despite having been expedited, has not concluded till date.

4 Perused the papers. The prosecution case entirely rests on circumstantial evidence. According to the prosecution, the incident had taken place on 27th November 2014 at about 12:30 a.m.

(midnight). According to Bajrangilal Nishad at about 12:00 in the midnight, when he was about to sleep, he heard some noise from the applicant's house; that at about 12:30 a.m. the applicant came out and started shouting for water; that he went near the applicant's house, he saw that the applicant was bleeding and was asking for water; when Angad (deceased) asked him what had happened and who had assaulted him, the applicant disclosed that he had not seen the assailant. According to Bajrangilal, he went to the terrace of the building to call other people and when he returned, he saw Angad (deceased) as well as one Ram Bahadur lying in a pool of blood inside their house. Bajrangilal has also stated that he saw the applicant's wife- Sarita sitting in the room and that she too had sustained injuries. It appears that initially, a complaint was lodged by the applicant, as against one unknown person, however, during the course of investigation, the applicant was arrested in connection with the said offence. It is not in dispute that the applicant's wife-Sarita was enlarged on bail by this Court (Coram : Revati Mohite Dere, J.) vide order dated 12th March 2018 passed in Criminal Bail Application No. 2456/2017.

5 It also appears that the applicant's first bail application i.e. Bail Application No. 2316/2018 was withdrawn, as the Court was not inclined to enlarge the applicant on bail. The same is recorded in the order dated 19th June 2019. Vide the said order dated 19th June 2019, since the applicant was in custody since 2015, the trial of the applicant was expedited and the learned Sessions Judge was directed to conclude the case as expeditiously as possible and in any event, within 9 months from the date of receipt of the said order.

6 It is not in dispute that till date, the evidence of the witnesses is yet to be recorded. The applicant had, in the said incident, sustained as many as five incised injuries on his left forearm, right arm, scalp, right shoulder and right forearm. The said Injury Certificate is at page 163 of the application. it also appears that the applicant had sustained fracture of his right frontal bone and was required to be operated upon for the said injury. In the said incident, the applicant's wife-Sarita also sustained two incised injuries on her scalp and hand as well as her third and fourth finger was required to

be amputated. She also sustained a traumatic amputation of her thumb. Whether or not the applicant was the assailant, will be considered by the trial Court, after the trial proceeds.

7 Considering the evidence on record and the fact that despite the direction given by this Court vide order dated 19th June 2019, directing the learned Judge to conclude the trial as expeditiously as possible and in any event within 9 months from the date of receipt of the said order, the trial has not commenced. The applicant is in custody since 2015, for almost 7 years.

8 Considering the aforesaid the application is allowed and the applicant is enlarged on bail, on the following terms and conditions:

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 15,000/- with one or two 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 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;

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

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

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

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

9 The application is disposed of in the aforesaid terms.

10 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.

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

REVATI MOHITE DERE, J.