

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2797 OF 2022

Mohammed Shanu Mohammed Rafiq .. Applicant
Shaikh

Versus

The State of Maharashtra .. Respondent

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Mr.Aniket Nikam i/b Mr.Amit Icham for the Applicant.

Ms.Veera Shinde, A.P.P. for the State/Respondent.

PSI Sunildatt Gomare, attached to Amboli Police Station,
present.

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CORAM: BHARATI DANGRE, J.
DATED : 09th NOVEMBER, 2022

P.C:-

1. Heard learned counsel Mr.Nikam for the applicant and learned A.P.P. Ms.Shinde for the State.

2. Mr.Nikam would press into service the ground of long incarceration by submitting that he came to be arrested in the subject C.R. registered with Amboli Police Station on 04/11/2017 and despite five years down the line, trial has not been completed.

The applicant faces charge under Sections 364(A), 307, 324, 341, 368, 384, 385, 386, 387, 388, 120(B) of IPC and

under Sections 3, 25 of the Arms Act alongwith Section 37(1) of the Maharashtra Police Act.

3. The case of the prosecution is to the effect that on 31/10/2017, some unknown persons kidnapped Bhavin Shah, the husband of the complainant and it is alleged that the complainant received a video clip on her Whatsapp Messenger, wherein her husband stated that some persons have kidnapped him and have confined him and they are demanding ransom of Rs.82,00,000/- for his release, else he would be killed. Admittedly, the entire amount of ransom was not paid and in fact the police agency rescued the victim.

As far as Section 307 of IPC is concerned, when the injury certificate is perused, barring one injury on the parietal region, no other injuries sustained by the victim, without any specification being highlighted in the certificate issued by the private Nursing Home, could have been said to be responsible for causing his death.

4. The applicant seeks his release on the ground of delay in trial and it can be seen that the prosecution has cited 36 witnesses, out of which third witness is under examination and it can be apparently inferred that trial is likely to consume some more time to be concluded.

The Hon'ble Apex Court has reiterated the need of speedy trial and in the case of *Union of India Vs. K.A.Najeeb*¹, it is specifically observed that the liberty guaranteed by Part III

¹ (2021) 3 SCC 713

of the Constitution would cover within its protective ambit, not only due procedure and fairness, but also access to justice and a speedy trial. While dealing with the case under UAPA Act, which is a special statute, the Hon'ble Apex Court has specifically held that there should not be hurdle in granting bail on the ground of infringement of Article 21 of Constitution of India. Right of speedy and fair trial has been thus recognized as a fundamental right and the long incarceration of the accused persons have entitled them for being released on bail, awaiting their trial.

I see no reason to take a different view. The applicant may take the consequences of the seriousness of the accusations levelled against him in the charge-sheet, but at present, since he is incarcerated for more than last five years and the trial is likely to consume considerable time in the light of the fact that the prosecution intends to examine as many as 36 witnesses, I refrain myself from commenting upon the merits of the case and deem it appropriate to secure his liberty only on the ground of long incarceration. This is, however, subject to the stipulation that he shall attend the trial on regular basis and there shall be no fault on his part in attending the trial. In case, there is any attempt on his part to prolong the trial, the liberty conferred on him would be liable to be curtailed.

Hence, the following order.

: **ORDER** :

(a) Application is allowed.

(b) Applicant – Mohammed Shanu Mohammed Rafiq Shaikh shall be released on bail in connection with C.R.No.390 of 2017 registered with Amboli Police Station on furnishing P.R. Bond to the extent of Rs.50,000/- with one or more sureties in the like amount.

(c) The applicant shall attend the trial on regular basis and shall abide by the directions issued by the trial Court. Any attempt on his part in delaying the trial would entitle the prosecution to seek cancellation of his bail.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(SMT. BHARATI DANGRE, J.)