

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4471 OF 2021

Abhishek Dilip Warghade .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Pratik Sabrad with Mr.Suraj Naik i/b Mr.R.D.Suryawanshi
for the Applicant.

Ms.A.S.Pai, S.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.

DATED : 11th OCTOBER, 2022

P.C:-

1. The applicant is charged in C.R.No.I-337 of 2015 registered with Ambarnath Police Station for the offences punishable under Sections 302, 307, 142, 143, 147, 148, 149, 341 of IPC, Sections 4 and 25 of the Indian Arms Act alongwith Section 37(1) of the Maharashtra Police Act. He came to be arrested on 05/01/2016 and charge-sheet is filed against 19 accused persons. A trial, though commenced, till date only four witnesses have been examined and 10 to 15 more witnesses are desired to be examined.

2. Heard learned counsel for the applicant and learned S.P.P. Ms.Aruna Pai for the State.

The applicant would press into service his long incarceration for last six years and the submission is, despite the trial being expedited long back in 2018 and to be precise by an order dated 12/04/2018 on an application filed by one of the co-accused Gurunath Gaikar, the trial is still lingering on. Learned counsel submits that despite the order being brought to the notice of the Sessions Court, it is progressing at a snail's pace.

Reliance is placed upon an order passed in favour of the co-accused Keval Gaikar, whose bail application was also rejected and the trial is expedited with liberty being conferred upon the accused to approach this Court, if the trial is not concluded within a stipulated period. The argument advanced is, the applicant will take the consequences of the charge framed against him, but six years is too long a period of incarceration and, since, the conclusion of the trial cannot be ascertained with a certainty by a particular day, the applicant deserves his release.

Per contra, Ms.Pai has placed on record an order passed by the Hon'ble Supreme Court on 04/04/2022, when one of the co-accused Gurunath Gaikar, whose bail application was rejected by this Court, has approached it and on considering the totality and circumstances of the case, though the trial was expedited, the application was dismissed. She would rely upon the specific material against the applicant compiled in the charge-sheet, which according to her, will demonstrate his complicity and considering the serious nature of the crime, Ms.Pai would request this Court to reject the application.

3. The prosecution case, which could be discerned from the charge-sheet and, particularly the complaint lodged by one Mr.Vinod Sudam Bhor on 25/12/2015 with Ambernath Police Station, would reveal that the complainant was engaged in business of supplying the building material in the Ambernath area. It is alleged that the Municipal Councilor, one Mr.Ramesh Sahebrao Gunjal @ Pappu Gunjal was also into the same business. The complainant used to look after the said business and on 25/12/2015, at around 10.15 a.m., when he went to see Mr.Pappu Gunjal, he was informed that he had gone to saloon at Morivali Naka and he immediately proceeded to the said place. While passing through Shivsena Shaka, he could notice Mr.Pappu Gunjal surrounded by 15 to 16 persons, who had assaulted him and on going closer, he could notice the assailants, whom he had specifically named in his complaint. He also gives the details of the weapons held by the said assailants and also attributes motive for such an assault. In his supplementary statement, recorded on 28/12/2015, he provides further information about the said incident with a specific motive, being attributed to the assailants.

4. Statement of one Hamid Sayyed makes a reference to the extra judicial confession made by the injured Pappu Gunjal, who disclosed the names of the persons who had assaulted him while he was being taken in the auto-rickshaw. One Mr.Umesh Jagale is also an eye witness to the incident of assault on Pappu Gunjal and he also named some of the assailants alongwith the weapons carried by them.

As far as the present applicant is concerned, he is referred to by the witnesses as Guddu Warghade and the complainant in his first information report, has specifically named the applicant as one amongst the others, who had mounted assault on Pappu Gunjal. His role in the entire episode has also surfaced on record through statements of Mangesh Basre, Shakuntala Kunnur, Mayur Konnur and Pramod Rasal.

Learned counsel for the applicant invited my attention to the statement of Pramod Rasal, recorded under Section 164 of Cr.P.C., where he attributes conspiracy to the present applicant. Undisputedly, the manner in which the offence is committed is gruesome one and the complicity of the applicant, prima faice, is reflected through the statements of the witnesses, which are compiled in the charge-sheet.

5. This Court has rejected the bail application of co-accused Gurunath Gaikar for the second time on 11/02/2021 (Criminal Bail Application No.3387 of 2019), against which he approached the Hon'ble Supreme Court, but it refused to interfere with the order of the High Court, and, however, directed the trial to be expedited. This order being passed on 04/04/2022, learned A.P.P. has relied upon an N.C. lodged against the father of the present applicant by one Anil Khade.

6. Though I am conscious of the seriousness of the accusations and the role attributed to the present applicant, what persuaded me to consider the argument of the learned

counsel for the applicant of securing his liberty is, his long incarceration. Despite the direction being issued in the year 2018 for the first time and in the year 2022 also for expediting the trial, it is not yet concluded though an attempt is made on behalf of the prosecution to submit that the delay is attributed to the applicant, I do not intend to keep him further incarcerated, as seriousness of the charge though may be looked into, it need to be balanced with the factors like the period of custody suffered and the period within which the trial is likely to be concluded. The applicant is in custody for over six years and the trial is proceeding at snail's speed.

The purpose of grant of bail is neither punitive nor preventive, but is aimed to secure the presence of the person in the trial. The settled principle, which has been emerged through various authoritative pronouncements from the highest Court of this country is, deprivation of liberty prior to conviction is a great hardship and should only be resorted to, if release on bail is likely to prejudice the trial.

7. The Hon'ble Apex Court in case of ***Union of India Vs. K.A. Najeer***¹ has once again reiterated the principle of liberty guaranteed by Part III of the Constitution, which covers within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial and has considered absence of possibility of timely trial and the period of custody as the relevant circumstances, which would obligate the Courts to enlarge the accused on bail, regardless of statutory restrictions imposed on right of bail by the

¹ (2021) 3 SCC 713

provisions of special statute like UAPA. The following observations of the Hon'ble Apex Court are of great significance and are reproduced hereunder :-

“15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India*, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

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18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anything soon, the High Court appears to have been left with no other option except to grant

bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected."

8. In the wake of the authoritative pronouncement of law from the highest Court and construing that the long incarceration of the applicant has denuded him of his liberty, I deem it appropriate to release the applicant on bail, on noticing that though time and again the trial was directed to be expeditiously concluded, it's conclusion appears to be far away, as 10 to 15 more witnesses are to be examined, which shall be followed by the recording of statement under Section 313 of Cr.P.C. of 19 accused persons and subsequently by the arguments to be advanced. By imposing strict conditions upon the applicant, I deem it appropriate to release the applicant on bail.

Hence, the following order.

: ORDER :

- (a) Application is allowed.
- (b) Applicant -Abhishek Dilip Warghade shall be released on bail in connection with C.R.No.I-337 of 2015 registered with Ambernath Police Station on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.

(c) The applicant shall mark his attendance before the concerned police station on first Monday of every month between 10.00 a.m. to 12 noon and shall attend the trial on all dates assigned by the Sessions Court. Any consecutive default or postponement of the trial on the part of the applicant, will entitle the prosecution to move an application to the concerned Court for cancellation of his bail.

(d) The applicant shall not step into the jurisdiction of the Ambernath Police Station, except for the purpose of marking attendance, as directed in clause (c) above and shall not enter the area where the complainant and the witnesses are residing.

(e) 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.

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

(SMT. BHARATI DANGRE, J.)