

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

CRIMINAL BAIL APPLICATION NO. 3006 OF 2022

Sagar Harilal Rathod ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Balwant Salunkhe, Advocate for the Applicant.

Ms. P. N. Dabholkar, APP for the Respondent – State.

Mr. Laxman Chavan API, Narpoli Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 19th DECEMBER, 2022

PC :

1. The Applicant is seeking bail in connection with C.R. No.I-104 of 2017 registered with Narpoli, Bhiwandi Police Station, Mumbai for offences punishable under Sections 302, 307, 324, 452 read with 34 of the Indian Penal Code and Sections 37(1) and 135 of Maharashtra Police Act.

2. The case of the prosecution is that, on 12th March, 2017 informant Rajkumar, his brothers and others had slept in their room. At about 11.30 p.m. they heard noise. So they all got up and came out of their room. They noticed that Sagar, Vijay, Aakash and

Avinath were found playing cards in front of the house of Dineshkumar. There was quarrel. At about 11.45 p.m. deceased Rajan went out for answering nature's call. Accused knocked the door. They broke open the door and entered into the house. Vijay Rathod assaulted Rajkumar Shilpakar by means of knife on his neck and hands. Aakash had assaulted Rajkumar by wooden stick, whereas Applicant/accused Sagar had assaulted Rajkumar by iron bar. Accused Avinash assaulted Shivkumar, Raju, Rampratap and Sureshkumar by wooden stick. Meanwhile, Rajan Shilpakar was returning back to room. At that time, accused Vijay had stabbed him on his chest, back and waist by knife. Aakash, Sagar and Avinash assaulted him by means of iron bar and wooden stick. Injured were referred to Civil Hospital, Thane. Rajan Shilpakar succumbed to injuries.

3. The previous application for bail preferred by Applicant viz. Criminal Bail Application No. 1733 of 2018 is rejected by this Court vide Order dated 25th January, 2019. However, the trial was expedited with direction to conclude the same within a period of nine months from the date of receipt of Order. Liberty was granted to the Applicant to prefer fresh application for bail in the event, the trial is not concluded within a period of nine months.

4. Vide Order dated 25th November 2022, the trial Court was requested to forward report about the status of trial. In compliance with the aforesaid Order, the learned Special Judge has forwarded the report dated 8th December, 2022. The report indicates that, the case was transferred to the said Court on 31st March, 2022 from another Court. The case was posted for evidence but no witness remained present and adduced evidence. No steps were taken by the prosecution to procure presence of witnesses and the matter was adjourned on 2nd May 2022 and 9th May 2022. However, on those dates, no steps were taken. The matter was then listed on 6th June, 2022 at the instance of learned APP, summons were issued to the informant and the case was adjourned on 6th July, 2022. On the day, the advocate representing the accused No.1 and 2 were absent. Apart from that, summons could not be served upon witness and the case was again posted for steps. Subsequently, the case was adjourned on 5th August, 2022 and 12th September, 2022, the advocate for the accused was not present on both days. The charge was framed on 18th September, 2019 and the matter was posted for evidence from time to time but no evidence could be recorded.

5. Learned Advocate for the Applicant submitted that, the Applicant is in custody for a period of about five years and nine

months. There is no progress in the trial. The Applicant cannot be detained in custody for indefinite period. Charge was framed on 18th September, 2019. The Applicant is 19 years old boy. There are no criminal antecedents against the Applicant. The Applicant is entitled for bail on the ground of long incarceration in custody.

6. Learned Advocate for the Applicant relied upon the Order passed by Apex Court in the case of Indrani Pratim Mukerjee Vs. Central Bureau of Investigation & Anr. dated 18th May 2022 delivered in Special Leave to Appeal (Cri.) No. 1627 of 2022 and contended that, the accused therein was granted bail although, the prosecution had examined 68 witnesses. The accused was in custody for a period of six and half years. Reliance is also placed on the Order dated 19th October, 2022 passed by this Court in Criminal Bail Application No. 312 of 2021 delivered in the case of Ashutosh Ashok Butte-Patil Vs. The State of Maharashtra.

7. Learned APP submitted that, the offence is of serious nature. The previous application for bail was rejected by this Court on merits. While rejecting the previous application, this Court has considered the nature of evidence against the Applicant. The victim had suffered several injuries. The manner in which he was assaulted is required to be considered. The accused were also responsible in

delaying the trial. The decision relied upon by learned advocate for the Applicant were delivered in the facts of these cases. The role has been attributed to the Applicant. Hence, bail may not be granted to the Applicant.

8. It is not in dispute that, the Applicant is in jail from 13th March, 2017. He is in custody for a period about five years and nine months. The report submitted by trial Court indicates that, the charge was framed on 18th September, 2019. Trial could not proceed. The witnesses were not procured. On 2 to 3 occasions, the Advocate for accused were absent. It is pertinent to note that, although charge was framed in 2019, the witnesses could not be examined. The report forwarded by Trial Court indicates the situation from March 2022. The role attributed to the Applicant is that, the Applicant alongwith co-accused assaulted the deceased.

9. The Hon'ble Supreme Court in the case of Indrani Pratim Mukerjea (supra) granted bail to the accused, who was in custody for six and half years without going into the merits of the case. In the case of Ashutosh Ashok Butte-Patil Vs. The State of Maharashtra (supra), long incarceration in custody was considered as ground for grant of bail. In the said Order several decisions of the Apex Court including the recent judgment in the case of Union of India Vs. K. A.

Najeeb delivered in Criminal Appeal No.98 of 2021 (Special Leave Petition (Cri.) No.11616 of 2019) dated 1st February, 2021 was relied upon. In the present case, the accused is in custody from 13th March, 2017. Liberty was granted to the Applicant to prefer fresh application for bail in the event, the trial is not concluded within a period of nine months. No witness has been examined by prosecution. The prosecution is not clear as to when the trial would be over. Considering the factual aspects of this matter, overtact attributed to the Applicant, age of the Applicant, absence of criminal antecedents, bail can be granted on certain terms and conditions.

ORDER

- (i) Criminal Bail Application No.3006 of 2022 is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R. No.I-104 of 2017 registered with Narpoli, Bhiwandi Police Station, Mumbai on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) Applicant is permitted to furnish cash bail security in the sum of Rs. 25,000/- (Twenty Five Thousand Only) for a period of 6 weeks in lieu of surety;
- (iv) Applicant shall attend concerned Police Station once in a month on first Saturday of month between 11.00 a.m. to

01.00 p.m. for one year and thereafter, once in a three months on first Saturday of month between 11.00 a.m. to 01.00 p.m. till further Orders.

- (v) The Applicant shall not tamper with the evidence.
- (vi) Criminal Bail Application stands disposed off.

(PRAKASH D. NAIK, J.)