

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL BAIL APPLICATION NO.182 OF 2023

Sopan S/o Bhagwan Gade,
Age 33 years, Occu. Agri.,
R/o Newasa, Dist. Ahmednagar. ... Applicant.

Versus

The State of Maharashtra ... Respondent.

WITH

CRIMINAL APPLICATION NO.739 OF 2023

IN BAIL APPLICATION NO.182 OF 2023

(Asif Khan s/o Ilayat Khan Vs. The State of Maharashtra and
another)

...

Advocate for Applicant : Mr. S. G. Ladda.

APP for Respondent-State : Mr. S. B. Narwade.

Advocate for complainant to assist APP : Mr. G. R. Syed.

...

CORAM : S. G. MEHARE, J.

RESERVED ON : 12.04.2023

PRONOUNCED ON : 13.04.2023

ORDER :-

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and learned counsel for the complainant.

2. The applicant has been arraigned as an accused in Crime No.222 of 2013, registered with Police Station Newasa, District

Ahmednagar, for the offences punishable under Sections 302, 120-B, 201, 143, 147, 148 and 149 of the IPC and Section 3/25 of the Arms Act and Section 37(1)(3)/135 of the Maharashtra Police Act.

3. The applicant had filed a Bail Application No.688 of 2020 with Criminal Application No.1344/2020 before this Court on the ground of Covid 2019 pandemic. At the request of the applicant, the leave was granted to him to withdraw the said application with a liberty to file a fresh bail application on its merits. Since 2019 and after the withdrawal of the bail application, he did not prefer the bail application. Lastly, he preferred a bail application before the learned Sessions Judge on 04.01.2023. The learned Additional Sessions Judge, Court No.3, Ahmednagar, dismissed his bail application on 05.01.2023. After that, the present application has been filed.

4. In a nutshell, the learned counsel for the applicant Mr. Ladda taking the Court through a bunch of papers, has vehemently argued that the prosecution has no evidence against the applicant that he was the party to a conspiracy nor he was the party to the agreement doing unlawful act. On the alleged date of the incident and before that, the applicant was behind the bar. It has been alleged against him that he

contacted the main accused on the mobile phone from jail. However, the police, under the suspicion of throwing the mobile handset used for conspiracy in the septic tank of jail, the police scooped out the said tank, but nothing was discovered. The applicant has been languishing in jail since 2013. Therefore, his detention should be considered having regard to the provisions of Sections 427 and 428 of the Criminal Procedure Code. It has also been argued that the applicant has languished in jail without progress in the trial. There is no evidence at all against the applicant. The trial has been protracted deliberately to see the applicant behind the bar. The political entities, who created a religious issue in harmony to gain political benefits, want to see him behind the bar.

5. To bolster his argument, he relied on the case of this Court in *Ashutosh Ashok Butte-Patil Vs. The State of Maharashtra, Criminal Bail Application No.312 of 2021* and *Hitesh Pravinchand Shah Vs. State of Maharashtra and another, 2003 SCC Online Bom. 1003*. Recently after the application was reserved for the order, he placed on record the case of *Bhaurao @ Dadasaheb Raybhan Dhamale Vs. The State of Maharashtra (Criminal Appeal No. 926/2023) (Arising out*

of SLP (C/Crl.) No. 12549/2022) decided on 24.03.2023 Supreme Court, and the order of this court dated 04.03.2022 passed in the case of Bhaurao @ Dadasaheb Raybhan Dhamale @ Dadasheb Raybhan Dhamale Vs. The State of Maharashtra in Bail application No.1530 of 2019 and prayed to grant the bail.

6. Per contra, the learned APP and learned counsel Mr. Syed has strongly opposed the bail application. It has been argued that the applicant is the conspirator, and many cases are there to his discredit. He arranged to have a mobile phone when he was behind the bar and plotted the conspiracy with the main accused. There is remarkable progress in the trial. The applicant was absconding for two years in another State. His acquittal in another case has been impugned before the Supreme Court. The deceased was practising law for the other fraction. Hence, the deceased was deliberately eliminated. It was the motive behind his murder. Hence, the deceased was deliberately eliminated. The trial is on the verge of completion. Due to the terror of the applicant and his gang, one witness Altaf, did not support the prosecution. Therefore, the prosecution has an apprehension that the other witnesses may be won over. The statement under Section 161 of the Cr.P.C.

may be considered for bail. It was a daylight murder. Considering the gravity of the offence and his bad past, he may not be granted bail.

7. To bolster the argument, learned counsel Mr. Syed relied on the case of *Indresh Kumar Vs. The State of Uttar Pradesh and another, 2022 LiveLaw (SC) 610*.

8. After the acquittal of the applicant by order of this Court in Criminal Appeal on 02.12.2022, the applicant started claiming that the trial has been protracted. He did not apply for bail from 2013 to 2020 except during the Covid 2019 pandemic. He was arrested for the present crime when he was already behind bar for another crime. The argument of learned counsel Mr. Ladda reveals that he is counting his detention since 2011 to convince the Court that the applicant has been languishing in jail since 2013. However, he has no explanation why any time before he did not apply for the bail or the directions were issued to expedite the trial and the trial has not been completed in the given time.

9. Considering the above facts, it appears that the applicant wants to secure the bail counting the period of his conviction for another crime. The status report was called in his case on

13.05.2022. This Court, by order dated 12.01.2022, in Criminal Writ Petition No.1183 of 2021, has observed that considering the difficulties as informed to us, we refrain ourselves from giving any specific directions about the disposal of the case on or before a certain date. However, we expect and hope that, at the earliest, with the co-operation from both side, the Trial Court will dispose of the case. In Criminal Writ Petition No.318 of 2022 filed by co-accused Mohan Suresh Lashkare, by order dated 13.04.2022, this Court directed the Trial Court to conclude the trial at the earliest and preferably within six (6) months from the receipt of copy of the order. The fresh progress report has also been called. The report, in a nutshell, reveals that most of the time, the trial was protracted as the accused were not ready to conduct the trial through video conferencing and insisting on their physical presence at each and every stage. Another obstacle that the Trial Court faced was the engagement of high-profile lawyers. The dates were given considering the difficulty of each lawyer representing the parties. Every time, the Trial Court has passed an appropriate orders. These are the facts of this case.

10. The present applicant is concerned, he is seeking bail on the ground that he has been languishing in jail since 2013. It is

to be considered whether he is entitled to claim the benefit of having no material progress in the trial. This Court, in the case of *Ashutosh (cited supra)*, by quoting various judgments on the issue of prolonging the custody of the accused without trial, held that the law has been settled that where the accused has been languishing in jail for a considerable period, bail may be granted. However, it is not a straight-jacket formula. The Court has to consider the facts of each case and other relevant circumstances.

11. Learned counsel for the applicant Mr. Ladda relying upon the case of *Hitesh (cited supra)* has tried to argue that the period of conviction of the applicant in previous crime be considered as a period for detention in this case as provided under Section 427(2) and 433-A of the Cr.P.C. The sentence of imprisonments imposed in different crimes on different counts normally run concurrently and not consecutively. Admittedly, the applicant was not convicted of this crime. Therefore, the said case law did not assist the applicant.

12. The Hon'ble Apex Court in *Indresh Kumar (supra)* has held that statements under Section 161 of Cr.P.C. may not be admissible evidence, but relevant in considering the *prima facie* case against an accused in an application for grant of bail

in case of a grave offence. Many witnesses are deposing against the applicant making allegations that he had connected with the present crime. Considering the ratio laid down by the Hon'ble Supreme Court in *Indresh Kumar*, barely, the non-discovery of the mobile handset in the septic tank of the jail allegedly used by the applicant may not be the sole circumstance to believe that he was not the party to the conspiracy. Particularly, where the statements of the other witnesses have been available on record.

13. Though the applicant has been languishing in jail for the present crime since 2013, he was not languishing in jail for this crime only. He was languishing in jail since he was convict of another crime. He was released in the said crime as acquitted on 02.12.2022. That date may be considered for his languishing in jail. Unless he has been convicted, the set-off under Section 428 cannot be considered. Therefore, also the case of *Hitesh* did not assist him.

14. Apart from the material on record, the applicant has a history of absconding from the police custody and remaining abscond for two years are also factors to be considered. The offence is obviously grave. The applicant was involved in various cases. Those have been decided finally or not, but

prima facie sufficient to believe the antecedents to his discredit.

15. In view of the discussion above, the Court is of the view that the applicant does not deserve bail.

16. Hence, bail application stands dismissed.

17. Criminal Application No.739 of 2023 to assist learned APP accordingly disposed of.

(S. G. MEHARE, J.)

...

vmk/-