

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1333 OF 2023

Avinash S/o Changdev Bankar @
Avinash S/o. Changdeo Bannkar Applicant

Versus

The State of Maharashtra Respondent

.....
Mr. A.D. Ostwal, Advocate for Applicant
Mr. K.S. Patil, APP for Respondent – State
Ms. Rashmi S. Kulkarni, Advocate for Informant
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[CORAM : S. G. CHAPALGAONKAR, J.]

RESERVED ON : 16th OCTOBER, 2023

PRONOUNCED ON : 20th OCTOBER, 2023

ORDER :

1. The applicant seeks regular bail in connection with Crime No.48 of 2017 registered with Shanishingnapur Police Station, District Ahmednagar for the offences punishable under sections 302, 506, 143, 147, 148, 149, 120(B), 201 of the Indian Penal Code and sections 3/25, 4/25 of Arms Act and sections 37(1)(3) and 135 of the Maharashtra Police Act.

2. Investigation was progressed on the basis of information given by Rameshwar Macchindra Bhutkar, stating that his brother (deceased), Ganesh Sonawane and present applicant had purchased an Agriculture land. Subsequently, the said land got mutated exclusively in the name of applicant. On that count, there was dispute between the deceased and the applicant. The deceased had informed about such disputes

to the informant and other family members. He had also informed that he is receiving life threats from the accused/applicant.

3. On 20.12.2017, accused Ganesh Sonawane made a phone call asking deceased to have a meeting for negotiation and settlement of the dispute. In response to the said invitation, the deceased had been to the spot of incident. The applicant along with co-accused arrived on the spot in a four wheeler. Other accused joined them on motorbikes. They were armed with deadly weapons. The applicant/accused kicked the deceased and made assault of axe on his head. Another accused Lakhan Daghe assaulted him on chest by sword. Accused Arjun Mahale and Pankaj Bankar raised pistol towards him to prevent his escape. Accused Bhaurao Dhamale was also assaulting him by stick.

4. The incident was witnessed by Namdev Chandra. He took deceased to the Hospital, where on examination, Doctor declared him dead. Accordingly, Crime No.48 of 2017 has been registered with Police Station Shanishingnapur for the offences punishable under sections 302, 506, 143, 147, 148, 149, 120(B), 201 of the Indian Penal Code and sections 3/25, 4/25 of Arms Act and sections 37(1)(3) and 135 of the Maharashtra Police Act.

5. The applicant was absconding after the aforesaid incident. He is arrested on 30.09.2018. After due investigation, charge-sheet came to be filed. On committal of case, charge is framed. Up till now Two witnesses have been examined in the trial. However, the progress of the trial is not

with the expected pace. In this background, the applicant approached this Court seeking regular bail under section 439 of the Code of Criminal Procedure.

6. Mr. A.D. Ostwal, learned advocate appearing for the applicant would submit that the applicant seeks bail on the merits, so also, on the ground of parity. He would submit that the applicant is behind the bars for more than five years as an under trial prisoner. Looking to the pace of the trial, further detention of the applicant would not be necessary. He would submit that the indefinite incarceration of the under trial prisoner is deprecated, and in such cases, taking into account the spirit of Article 21 of the Constitution of India, the accused are released on bail.

7. He would submit that in the present case, charge-sheet has been filed against seven accused persons including the applicant. Four accused persons are already enlarged on bail. He invited attention of this Court to the order dated 22.09.2021 in Bail Application No.1123 of 2021 filed by accused Pankaj Bankar, who has been released on bail. The allegations against the said accused is that he was wielding the pistol towards the deceased. Similarly, he invited attention to the order passed by the Supreme Court of India, releasing accused Arjun Mahale, Bhaurao Dhamale, on bail. Mr. Ostwal, further invited attention of this Court to the order dated 10.10.2022, releasing accused Ganesh Sonwane and Rameshwar Bhutkar on bail. He would submit that accused Ganesh is specifically named in the F.I.R. and role attributed against him is the assault using sword on the head of deceased Ganesh, which is similar to role ascribed against the

applicant. He would therefore submit that the applicant deserves release on bail invoking principle of parity.

8. Mr. Ostwal, learned advocate appearing for the applicant would submit that the right of speedy trial has been approved as fundamental right under Article 21 of the Constitution of India, and the Courts are duty bound to protect such right of the accused. He would submit that in the present case, the applicant is behind the bars for more than five years. Recently, charge is framed and two witnesses have been examined, but there is no progress in the trial. The prosecution proposed to examine examine 35 witnesses as per charge-sheet. The trial is likely to take much time. Indefinite incarceration of the applicant cannot be permitted. He submit that in similar circumstance, this Court as well as the Supreme Court of India exercised the discretionary jurisdiction to grant bail in favour of the undertrial presoners. By inviting attention to the "*Rojnama*" of Sessions Case, he endeavors to point out that the trial is prolonged because of the fault of the prosecution, and the applicant is not anyway responsible for the delay. In support of his submissions, he relied upon the following judgments:-

1. *Rajdev Kumar Yadav Vs. State of Maharashtra*, 2010 ALL M.R. (Cri.) 1466.
2. *Vinod Bhandari Vs. State of Madhya Pradesh*, (2015) 11 SCC 502.
3. *Maulana Rashadi Vs. State of Uttar Pradesh*, (2012) 2 SCC 382
4. *Umarmia Vs. State of Gujrat*, (2017) 2 SCC 731.
5. *Supreme Court Legal Aid Committee Vs. Union OF India*, (1994) 6 SCC 731.

6. *Paramjit Singh Vs. State (NCT of Delhi)*, (1999) 9 SCC 252
7. *Shaheen Welfare Association Vs. Union of India*, (1996) 2 SCC 616
8. *State of Kerala Vs. Raneef*, (2011) 1 SCC 784.
9. *Dipak Shubhashchandra Mehate Vs. C.B.I.*, (2012) SCC 131.
10. *Sharad Kumar Vs. C.B.I.*, (2012) 1 SCC 65.
11. *Sanjay Chandra Vs. C.B.I.* (2012 SCC 40.
12. *Laxman Irappa Hatti Vs. State of Maharashtra*, 2004 All M.R. (Cri.) 3073.
13. *Menino Lopes Vs. State of Goa*, 1994 All M.R. OnLine 636.
14. *Sagar Tatyaram Gorkhe Vs. State of Maharashtra*, 2017 ALL SCR (Cri.) 318.
15. *Umarmia Vs. State of Gujrat* 2017 ALL SCR (Cri) 318.
16. *Babu Singh Kushwaha Vs. C.B.I.*, 2016 ALL SCR (Cri.) 510.
17. *Jayendra Saraswathi Swamigal Vs. State of Tamil Nadu*, (2005) 2 SCC 13
18. *Sanjay Jha Vs. State of Chhattisgarh*, (2014) 3 SCC 202.
19. *Ajit Singh Vs. State of Uttar Pradesh*, 2017 ALL SCR (Cri.) 1463.
20. *Shri Mahendrasingh Chauhan Vs. The C.B.I.* (Bail Application No.1048 of 2018, Bombay High Court, Bench at Aurangabad).

As such, he urged to release the applicant on bail.

9. Learned APP strongly opposes the prayer for grant of bail. He would point out that although the offence has been registered on 21.12.2017, the applicant came to be arrested on 30.09.2018. About nine months he was absconding. Learned APP points out that the applicant is the mastermind and key person in commission of the offence. There was

dispute over the landed property between the applicant and the deceased. With pre-planned object, the applicant and other accused called the deceased at the place of incident. They arrived at the spot with preparation to cause murder with deadly weapons. The applicant thrashed deceased to raise first attack and gave blow of axe on his head. Thereafter, other accused persons assaulted him using sword and sticks. The firearms were used to prevent intervention of others and also generate terror in the locality. The applicant is a hardened criminal. Learned APP point out that the ground of parity would not be available to the applicant. He submit that the role of those accused released on bail is distinguishable from the role of the applicant. He would point out that although there are allegations against the accused Ganesh regarding the assault using the sword, the CCTV footage does not show his presence on the spot. Giving benefit of this, he has been released. Learned APP also point out that the cause of death is described as head injury in the *post-mortem* report. The role of the accused/applicant is attributed to the blow of axe on head of the deceased. Therefore, the injury responsible for the cause of death is caused by the applicant. He would further submit that the applicant had *mens rea* to cause murder of the deceased. He gathered other accused persons and planned to cause the murder. The applicant is seen in the CCTV footage. The eye witnesses have clearly attributed role against the applicant. Therefore, the plea of parity is not available to the applicant.

10. Ms. Rashmi Kulkarni, learned advocate appearing for the informant buttresses the argument advanced on behalf of learned APP. She invites attention of this Court to the judgment of Supreme Court of India in the matter of ***Mahadev Meena Vs. Praveen Rathore and another***, reported in ***2021 SCC OnLine SC 804*** to contend that the Court must focused on role of the accused while granting the bail. Even while considering the aspect of parity, the Courts are required to analyze the role of individual accused. With this contention, she would submit that the applicant cannot claim parity. She would point out that the delay in the trial is attributable to the prosecution as well as the accused. The applicant cannot claim millage of the same. Therefore, she urges to reject the application.

11. Having considered the submission advances, apparently, the applicant is seeking bail mainly on the ground of parity and inordinate delay in concluding the trial. So far as the first ground is concerned, the Supreme Court of India in the matter of ***Ramesh Bhavan Rathod Vs. Vishanbhai Hirabhai Makwana***, reported in ***(2021) 6 SCC 230***, has observed as under:

"26. The High Court has evidently misunderstood the central aspect of what is meant by parity. Parity while granting bail must focus upon role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The High Court has proceeded

on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law.”

12. In view of the aforesaid observations, if the material placed on record is considered, it can be observed that out of seven accused persons, five are enlarged on bail. So far as accused Pankaj Bankar is concerned, this Court granted him bail vide order dated 22.11.2011 in Bail Application No.1123 of 2021. This Court observed that the accused Pankaj was wielding a pistol, however, he has not played any role in actual assault to the deceased Ganesh. Even the accused No.3 Arjun Mahale is attributed with similar role, therefore, he is released on bail by order of Supreme Court of India dated 07.11.2022 in S.L.P. No. 4762 of 2022. Accused Bhaurao Dhamale is released on bail by order passed by the Supreme Court of India dated 24.03.2023 in S.L.P. No.12549 of 2022. He is attributed with the role of assaulting deceased by wooden stick. The similar role is attributed against Lakhan @ Laxman Namdeo Dhage, who has been released on bail by order dated 11.09.2023. So far as accused Ganesh Sonwane is concerned, he is released on bail by order dated 10.10.2022 passed by this Court in Bail Application No.1487 of 2021. This Court observed that although there are allegations that the accused Ganesh assaulted deceased by the sword, he is not seen in the CCTV footage along with other accused persons. This particular aspect is given weightage, while favourably considering his plea for grant of bail.

13. It is evident that specific reasoning is adopted by the Courts, while releasing the accused on bail, in each of the aforesaid matters. It will have to be considered that, whether

the case of the applicant is comparable with those accused persons. So far as the applicant is concerned, there are specific attributions against him that he had dispute with deceased on account of the mutation of the plot that was jointly purchased by them. Secondly, all the accused persons gathered together at the office of the applicant accused and reached at the spot of the incident in a Scorpio Jeep. The applicant thrashed deceased and gave the first blow on the person of the deceased. Particularly, he is the author of the head injury caused using the axe. As per *post-mortem* report, the cause of death lies is the head injury. The applicant is named in the F.I.R. with his specific role, which is supported by the statement of eye witnesses. CCTV footage also confirms the presence of the applicant and his role. The aforesaid facts and material against the applicant clearly distinguishes his role from other accused persons. Therefore, applying the test of analysis based on individual role, it is difficult to accept the contention raised on behalf of the applicant that the principle of parity would enure his benefit.

14. The next contention is that he is behind the bars for more than five years since he has been arrested on 30.09.2018. The Trial is proceeding with the snail's speed. Only two witnesses are examined by this time, and it may take its own course to conclude the trial. Learned advocate appearing for the applicant has relied upon the list of citations. The statutory principle laid down in all these cases said that the under trial prisoner cannot be detained for indefinite period. Prolonged incarceration of the accused is deprecated, and the right of speedy trial is recognised to be a fundamental

right under Article 21 of the Constitution of India. There is no dispute about the legal proposition espoused in the judgments relied upon on behalf of the applicant. However, none of the judgment lays hard and fast proposition to release of the under trial prisoner after particular period of incarceration laid down. On the other hand, a caution is given that before releasing the applicant on the ground of prolonged trial, the Courts must apply the mind to the gravity of offence, the nature of allegations, the period incarceration, and the evidence available on record depicting complicity of the accused in the crime.

15. In the present case, the evidence on record pin points the guilt of the applicant in commission of heinous crime. It is not the case of the simple murder, but it is a planned execution with intention of pave deep impression of terror in the mind of localities. Pertinently, after the incident, the applicant was absconding for the period of nine months. There are criminal antecedents to his discredits. The trial is reached at most crucial stage. The release of applicant at this stage may bring deterrence in the mind of the witnesses. The possibility of hampering smooth trial and tampering of evidence cannot be ruled out.

16. In that view of the matter, no case is made out to exercise discretion to enlarge the applicant on bail. Resultantly, the application is dismissed.

[S. G. CHAPALGAONKAR]
JUDGE

S.P. Rane