

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

935 BAIL APPLICATION NO.1700 OF 2023

SACHIN APPA ITHAPE
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Jadhav Yogesh Arun
APP for Respondents/State : Mr. K.S. Patil.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 11TH OCTOBER, 2023

ORDER :-

1. The applicant seeks regular bail in connection with Sessions Case No.50 of 2017 pending before the Sessions Judge, Jalgaon for the offences punishable under Sections 307, 353, 332 of IPC registered with police station, Chalisgaon City, in Crime No. 155 of 2016.

2. The investigation was set in motion on the basis of the information recorded by the Police Officer Ankush Shivaji Mane, who was posted at local crime branch, Pune Gramin. In nutshell, it is alleged that the applicant was a wanted offender in connection Crime No.622 of 2016 registered with Police Station, Yavat. The informant alongwith other officers of the Crime Branch had received an hint that accused is hidden at Chalisgaon. They arranged a trap and team of police personnel arrived at Chalisgaon. It is further alleged that when accused noticed arrival of the police, he came out of the house and opened fire of his carbine gun towards the police. The police officers saved themselves by taking shelter in nearer houses. PSI Ankush Mane fired bullets on the

applicant through his service revolver. Two bullets hit on the leg of the applicant. Thereafter, police apprehended the applicant. Carbine gun was seized from him.

3. On the basis of the aforesaid information, FIR in Crime No. 155 of 2015 came to be registered with police station, Chalisgaon against the applicant. After completion of investigation charge sheet is filed. However, till the date the trial could not be concluded. The applicant moved the Sessions Court vide application IA No. 1 of 2022 in Sessions Case No. 50 of 2017 below Exh.18 seeking bail invoking the provisions of Section 436-A of the Cr.PC. However, his application came to be rejected. Hence, the present application.

4. The learned advocate for the applicant submits that the applicant is behind bars since 1.11.2016. Although charge is framed prior to one year of filing the present application, there is no progress in the trial. Muddemal is not produced and for that purpose, the matter is adjourned. He would submit that there is no hindrance on the part of the applicant in conduct of the trial. It is the fault of the prosecution to lead evidence. He submits that the valuable right of speedy trial available to the applicant is deprived. His further detention cannot be continued for no fault on his part. As such, he urges to grant bail.

5. Mr. Patil, the learned APP strongly opposes the application. He submits that the offence is serious. The applicant, who was offender in many cases had opened fire when he was nabbed by the police officer. Learned APP further submits that charge is already framed and within a short period, trial is likely to be concluded. The release of the applicant

at this stage will hamper the prosecution. Mr. Patil, invites attention of this court to the seven offences registered against the applicant for various offences and submits that applicant is habitual offender hence, the application be rejected.

6. Having considered the submissions advanced, it is apparent that the applicant has been arrested on 1.11.2016. He is behind bars for almost 7 years. The trial is progressing at a snail speed. The roznama shows that trial is stuck at the stage of production of Muddemal. Most of the time, accused is not produced before the court. Apparently, no fault can be found with the applicant for delay in the trial. It is failure of the prosecution to lead evidence. Pertinently, the Supreme Court of India in the matter of “*Sanjay Chandra vs. C.B.I.*” reported in 2012 AIR (SC) 830, observed as under :-

“The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.”

Similarly, this Court in the matter of “*Sachin Atmaram Vartak vs. State of Maharashtra*” reported in 2022(1)Bom.C.R.(Cri.) 628 observed as under :-

“The settled principle of law is that prolonged custody affects fundamental rights under Article 21 of Constitution of India. The conflict at the most could be in the directions issued in the case of Supreme Court Legal Aid Committee (supra) and Section 436-A of Cr.P.C; since the criteria for releasing the accused is based on sentence and mathematical calculation of period of custody. However, there is no debate that incarceration in custody for long period without trial or completion of trial affects personal liberty guaranteed under Article 21 of the Constitution of India.”

7. Perusal of the factual aspects of the present case would show that although charge under Section 307 is incorporated against the applicant and allegation is made that he had opened fire against the police officers, the evidence in the charge sheet is in the nature of statement of police officers. None of the police officers had suffered any injury on account of the alleged firing by the applicant. On the other hand, the applicant had suffered injury on his legs due to bullets fired by the police officers. Whether Section 307 of IPC can be invoked in present case would be subject matter of trial. However, keeping in view the aforesaid principles espoused by the Supreme Court of India as well as this Court, it cannot be disputed that Article 21 of the Constitution of India recognize speedy trial to be a fundamental right. Indefinite incarceration of the victim is deprecated. If there is failure on the part of the prosecution to complete the trial in 7 years and applicant is languishing in jail, the right of the applicant under Article 21 of the Constitution of India is infringed. In that view of the matter, further detention of the applicant can not be permitted. As such a case is made out for grant of bail. Hence, the following order :-

8.

ORDER

- (i) The application is allowed.
- (ii) The applicant – Sachin Appa Ithape be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- with one solvent surety of the like amount, in crime No. 155 of 2016 registered with Chalisgaon City Police Station, Dist. Jalgaon, if not required in any other offence, on the following conditions :-

[a] The applicant shall not tamper with the prosecution evidence/witnesses.

[b] The applicant shall attend the trial on each and every effective date.

[c] He shall furnish the details of his address and contact numbers with the concerned police station and update the same from time to time till conclusion of trial.

[d] The applicant shall not indulge in similar offence.

[e] The application stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-