

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

BAIL APPLICATION NO.2218/2022

MAHESH RAJARAM KADAM ..APPLICANT
VS.
THE STATE OF MAHARASHTRA & ANR. ..RESPONDENTS

**WITH
BAIL APPLICATION NO.2226/2022**

PRATAP HANMANTA KHOT ..APPLICANT
VS.
THE STATE OF MAHARASHTRA & ANR. ..RESPONDENTS

Adv. Hrishikesh Mundargi i/b. Adv. Pravada Raut for the
applicants.
Ms. P. N. Dabholkar, APP for State.
Adv. Veerdhawal Deshmukh for the respondent no.2-
complainant.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 16, 2023.

P.C. :

- 1.** Heard learned counsel for the applicants and learned APP for the State.
- 2.** These are the applications for bail in respect of the offence punishable under Sections 302, 341, 506, 212, 201, 120-B read with 34 of the Indian Penal Code (hereafter 'IPC' for short) registered vide First Information Report (FIR)

No.326/2016 with Akluj Police Station.

3. These applications are strenuously objected by learned APP and learned counsel appearing on behalf of the respondent no.2-complainant.

4. It is alleged that the applicants assaulted the victim and the complainant with an axe and a knife and ran away from the spot of incident. The incident is dated July 30, 2016. There are as many as 21 injuries on the person of the deceased as the post-mortem report indicates. The offence is undoubtedly serious in nature. It is pertinent to mention that the applicants are now in custody for more than six and a half years. It is submitted that the trial proceeded and as many as 14 witnesses came to be examined. Even the statement under Section 313 of the Code of Criminal Procedure (hereafter 'Cr.P.C.' for short) was recorded by the trial Court. It is thereupon that the prosecution filed the application for recall of the witnesses. The same was permitted. The order came to be challenged before this Court by way of Criminal Writ Petition No.6268/2021. This Court by an order dated January 31, 2022 in Criminal Writ

Petition No.6268/2021 observed in paragraphs 12 and 13 as follows:

“12. If an application is filed by the prosecution for recalling/re-examination of the said witnesses, setting out the reasons for the same, the learned Judge to consider the same, on its own merits, after hearing the advocate for the petitioners and keeping in mind the law with regard to the same.

13. As far as the other witnesses who were permitted to be examined, the learned Judge to ensure that prompt steps are taken by the prosecution, failing which, the learned Judge to proceed with the trial, in accordance with law. Having regard to the fact, that the petitioners are languishing in jail for the last six years, the trial of the petitioners is expedited. The learned Judge to conclude the case as expeditiously as possible and in any event within 3 months from the date of receipt of this order.”

Thus, this Court had directed the trial Court to conclude the trial within a period of three months from January 31, 2022.

5. Thereafter, a second application was filed under Section 311 of the Code of Criminal Procedure Cr.P.C. which was eventually withdrawn. Then third application was filed under Section 311 of the Cr.P.C. and the same has been

allowed. No doubt, the order passed in the third application was challenged by the applicants right upto this Court. The challenge failed. However, considering the applications made under Section 311 of the Cr.P.C., after recording the statement under Section 313 of the Cr.P.C., it cannot be alleged that only the applicants are responsible for protracting the trial. The trial did not conclude even within the period prescribed by this Court in view of the subsequent application that has been filed under Section 311 of the Cr.P.C. The fact remains that the applicants are in custody for more than six and half years. There is no allegation that the applicants have in any manner tried to tamper with the evidence or threaten the witnesses. There are no criminal antecedents reported against the applicants. Even though the Hon'ble Supreme Court had rejected the bail application, but that was in the year 2017.

6. Considering the long incarceration, along with the right to speedy trial, in the facts of the present case, even though the accusations against the applicants are very serious in nature, in my opinion, a case is made out for

grant of bail. It cannot be said that the trial is protracted at the instance of the applicants. Learned counsel for the applicants submitted that they are even willing to stay out of the jurisdiction of the Solapur District till the trial is concluded.

7. Though the applications are seriously opposed by learned APP and learned counsel appearing for the respondent no.2, in my opinion, having regard to the facts and circumstances of the present case and the nature of the accusations, the applicants can be released on bail. Hence the following order.

ORDER

(a) The applications are allowed.

(b) The applicant-Mahesh Rajaram Kadam in B.A.No.2218/2022 and the applicant-Pratap Hanmanta Khot in B.A.No.2226/2022 in connection with FIR No. No.326/2016 with Akluj Police Station, shall be released on bail on their furnishing P.R. Bonds of Rs.25,000/- each with one or more sureties in the like amount.

(c) The applicants shall mark their attendance in the

trial Court once in every month.

(d) The applicants shall not enter the area of the Solapur District except for the purpose of attending the trial.

(e) The applicants 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 applicants shall not tamper with evidence.

(f) On being released on bail, the applicants shall furnish their contact numbers and residential addresses to the Investigating Officer and shall keep him updated, in case there is any change.

8. The applications are disposed of.

(M. S. KARNIK, J.)