

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

CRIMINAL BAIL APPLICATION NO. 453 OF 2023

Papa @ Vinod Madhukar Karosia

...Petitioner

Versus

The State Of Maharashtra

...Respondent

....

Mr. Aniket Vagal a/w Mr. Kunal Pednekar, Advocate for Applicant.

Mr. M.G. Patil, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.

DATE : 24th APRIL, 2023.

PER COURT:

1. This is an application for bail in C.R. No.I-136/2018 registered with Manmad City Police Station, Nashik for offences punishable under Sections 302, 307, 452, 323, 201, 120-B r/w 34 of Indian Penal Code (for short 'IPC').

2. The previous application for bail viz. Bail Application No.3348 of 2019 was rejected by this Court on merits vide order dated 21st August, 2020.

3. The applicant thereafter preferred Criminal Bail Application No.3933 of 2021 before this Court for bail on medical grounds which has been rejected vide order dated 18th February, 2022. copy of the said order is not annexed to this application. However, the

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said fact was reflected in the order dated 11th January, 2023 passed by the learned Additional Sessions Judge, Malegaon, District Nashik rejecting the second bail application by the applicant before the said Court. After the said fact was brought to the notice of the learned Advocate for the applicant, the copy of the order dated 18th February, 2022 was placed before this Court.

4. The first information report (for short 'FIR') was registered on 23rd July, 2018 by Smt. Vaishali Pundalik Sadgir. She is the sister of deceased Dattu Sadgir. It is alleged that, on 22nd July, 2018 Dattu had accompanied the applicant. The cell phone of Dattu was taken by applicant. Since Dattu was demanding his phone he was abused by applicant. On hearing commotion, the first informant and her mother went to the spot of incident and they took him home. After some time the applicant, Sopan Hivrale and his two associates passed from infront of house of first informant on motorcycle. Brother of first informant Nilesh was returning home and on hearing shouts the first informant went to the spot and saw that, the applicant, Sopan Hivrale and others were assaulting Nilesh. He had suffered head injury. He collapsed on the floor. Nilesh was brought home and taken to hospital at Manmad for treatment. At about 9:30 p.m., Dattu was sleeping in the house. At

that time the applicant and his associates kicked the door of the house and barged into the house. They were armed with large knives. The applicant gave a blow of knife near the waist of Dattu and dragged him out of the house. Thereafter, again blows of knife were given by him on chest. The first informant snatched the knife from the hand of applicant's associate. The said accused pushed the mother of informant as a result of which her head was banged on the floor and she suffered injury. Dattu had fallen on the floor in pool of blood. He was taken to hospital at Manmad for treatment. He was declared dead. Supplementary statement of first informant was recorded on the same day. In the said statement, she stated that, the applicant and his associate Rohit Jagtap assaulted Dattu with knife and thereafter he was dragged out of house and again assaulted. Statements of other witnesses were recorded. The applicant was arrested on 24th July, 2018. Co-accused were also arrested. Injury certificate of Nilesh, mother of deceased are on record. On completing investigation charge-sheet was filed.

5. Learned Advocate for applicant submitted that, the applicant is in custody from 24th July, 2018. There is no progress in the trial. The prosecution has so far examined only one witness. The co-

accused are on bail. There are no chances of trial getting over soon. The role of assault is also attributed to other accused in the supplementary statement of first informant. The applicant is ailing and undergoing treatment in jail hospital. He was also treated at J.J. Hospital. Learned Advocate has relied upon the medical report issued by Chief Medical Officer, Nashik Road Central Prison dated 28th April, 2021 and 21st December, 2021. These reports are annexed to the application. It is further submitted that, medical reports/case papers were sought through RTI which indicate that the applicant was admitted in J.J. Hospital for treatment. Even after rejection of application for bail on medical grounds by this Court, the applicant was admitted at J.J. Hospital for treatment. The health condition of application is deteriorating. The prosecution is relying upon the antecedents of the applicant. In C.R. No.I-103/2014 registered for offences under Sections 326, 504 and 506 of IPC the applicant has been acquitted. The applicant is also acquitted in connection with C.R. No.1 of 2015 and 46 of 2015. Learned Advocate has placed on record the judgments of acquittal in all the three cases. It is further submitted that, C.R. No.I-121/2016 was registered for offences under Sections 363 and 366 of IPC. The applicant had performed marriage with the victim girl. C.R. No.I-183/2016 registered for offences under Sections

326, 323, 504, 506 and 34 of IPC and C.R. No.105 of 2014 registered for offences under Section 392, 323 r/w 34 of IPC are pending before the concerned Court.

6. Learned Advocate for the applicant has relied upon the orders passed by this Court in Bail Application No. 430 of 2021 dated 5th January, 2022 and Bail Application No.312 of 2021 dated 19th October, 2022, wherein bail was granted to the accused on the ground that, they were in custody for substantial period of time and there was no progress in trial.

7. Learned APP submitted that the previous application for bail was rejected by this Court on merits. There is no change in circumstances. The previous application was rejected by assigning reasons. The applicant is habitual offender. Several cases were registered against him. He tendered the Police report dated 24th March, 2022 which refers the antecedents of applicant mentioned hereinabove as well as one more case registered vide C.R. No. I-183/2016 for offences under Sections 326, 323 and 506 of IPC. The prosecution proposes to examine about 25 witnesses. The applicant is provided treatment in jail. The role attributed to the co-accused who are granted bail can be distinguished. Considering the nature of offence the applicant may not be granted bail.

8. The previous application for bail was rejected by this Court vide order dated 21st August, 2020. While rejecting the said application this Court analyzed the merits of case. In the present application the applicant has urged that he is in custody for substantial period of time and there is no progress in trial and that the applicant is ailing for which he undergoing treatment in jail.

9. The medical reports annexed to this application submitted by Chief Medical Officer, Nashik Road Central Prison dated 28th April, 2021 and 21st December, 2021 indicate that the applicant was examined by Medical Officer of Prison Hospital. He was also examined by Physician of Civil Hospital Nashik and diagnosed him as Sub Acute Obstruction managed Conservatively and given treatment for the same from 5th April, 2021 to 15th April, 2021. He was again admitted in hospital on 28th April, 2021. The report dated 21st December, 2021 reiterates the contents of the earlier report. It is pertinent to note that after the aforesaid reports dated 28th April, 2021 and 21st December, 2021, the application for bail preferred by the applicant on medical ground was rejected by this Court vide order dated 18th February, 2022. On perusal of the said order it appears that this Court had considered medical report of the applicant dated 21st December, 2021 from C.M.O. Nashik Road

Central Prison. Which was taken on record. It was also observed that, the report shows that the applicant has been diagnosed with sub acute obstruction of intestine. The applicant was complaining of generalized weakness with loss of appetite and vomiting. The ailment of the applicant is managed conservatively and it has been treated at Civil Hospital at Nashik on 15th April, 2021. It was submitted by learned Advocate for applicant that the applicant was admitted in the hospital and treated at Civil Hospital at Nashik. This Court then observed that looking at the medical report, the nature of ailment and the fact that the applicant is being treated at Civil Hospital, Nashik, no case is made out for releasing the applicant on bail on medical ground. It was thereafter submitted by the learned Advocate for the applicant that the applicant may opt for treatment in a private hospital, if released on bail. While dealing with the said submissions this Court has observed that the applicant can apply to the concerned Court for treatment in a private hospital, if so advised. It will be open to the applicant to move to the learned Magistrate or to the learned Sessions Judge as the case may be for treatment in the private hospital at his own cost, if such treatment is advised by Medical Superintendent of Prison Hospital or the Civil Hospital, concerned. If such an application is made, the Court shall pass appropriate orders on its

own merits and in accordance with law. The applicant thereafter, preferred an application for bail before the Sessions Court, Malegaon, District Nashik. It is pertinent to note that the said application was not preferred on medical ground in accordance with liberty granted by this Court vide order dated 18th February, 2022. On perusal of order dated 11th January, 2023 passed by Sessions Court Malegaon it is apparent that, the only submission made before the Sessions Court was that the trial has not commenced and there is no one to look after the family other than the accused. The Sessions Court while rejecting the said application has observed that bail application was rejected on merits by the High Court vide order dated 21st August, 2020 and also on medical grounds by the High Court vide order dated 18th February, 2022. The Court had issued witness summons to the prosecution witnesses and the said witnesses were present. However, at that time accused no.3 sought adjournment. Thereafter, accused no.3 remained absent and the Court issued non-bailable warrant as well as notice to his surety. The surety was present in the Court and produced externment order passed against accused no.3, which shows that, he was externed for a period of one year till 24th January, 2023. There was no change in circumstance.

10. I have perused the medical case papers tendered by the learned Counsel for the applicant which indicated that the treatment is given to the applicant. He was admitted in J.J. Hospital. Thus appropriate treatment is provided to applicant. From the order passed by the Sessions Court it is apparent that, witness summons has been issued. Several cases were registered in the past against the applicant. Some of them are still pending. I have perused the judgments of acquittal tendered by the learned Counsel for the applicant in three cases. It is apparent from the said judgments of acquittal indicate that the witnesses examined by the prosecution has not supported the prosecution case, which was the reason for resulting the case into acquittal. In view of aforesaid circumstances, no case is made out for grant of bail. However, considering the fact that the applicant in custody from 24th July, 2018, the trial can be expedited.

ORDER

- i. The Criminal Bail Application No.453 of 2023 is rejected.
- ii. The trial is expedited.
- iii. In the event, the trial is not concluded within six months from the date of receipt of this order, the applicant is

granted liberty to prefer a fresh application for bail.

iv. The Applicant shall not protract the trial.

v. This order be communicated to the trial Court immediately.

(PRAKASH D. NAIK, J.)