



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

BAIL APPLICATION NO. 573 OF 2023

SATENDRA @ SONU RAMJI PAL

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Mr. Aabad Ponda, Senior Advocate i/b Mr. Bhomesh Bellam,
for the Applicant.

Mr. P. H. Gaikwad, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 07, 2023

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.
2. This is an application for bail in respect of the offence punishable under sections 302, 307, 120B read with 34 of the Indian Penal Code, 1860 and under sections 3, 25 and 27 of the Arms Act registered on 22/04/2018 vide C.R. No.249 of 2018 with Kurar police station.
3. The applicant is the accused no.3. The applicant was arrested on 08/05/2018.
4. So far as the Brijesh Naturam Patel (accused no. 4) is concerned, he had a motive and his role is similar to that of

the applicant. Brijesh Naturam Patel has been enlarged on bail by the order dated 18/10/2023 passed by this Court in Bail Application No. 1503 of 2022. The relevant portion of the order reads thus :

“This is a second bail application filed by the applicant, who is arraigned as accused in C.R. No. 249 of 2018 registered with Kurar Police Station, which was investigated by Crime Branch, as it invoked Sections 302, 307, 120 (B) of IPC, along with Sections 3, 25, and 27 of the Indian Arms Act.

In connection with the aforesaid CR, he was arrested on 8/05/2018 and since then he remains incarcerated.

2 The first application filed by him, seeking his release on bail was decided on merits on 16/04/2021, and considering his involvement in the subject crime and by referring to the conspiracy that has hatched, to do away the deceased person, the application was rejected. In the said order, it is specifically recorded that the offence committed by the accused persons is grave and serious, as the deceased was done away by resorting to the method of contract killing on account of dispute in the SRA project and the involvement of the accused clearly surfaced through the charge-sheet as well as the supplementary charge-sheet.

3 The learned counsel Mr. Muttahar Khan appearing for the applicant would press into service, the long period of his incarceration, as according to him, it is more than 4 years of his arrest that he continue to be incarcerated as under-trial prisoner and the charge has been framed just few months back, with no chance of culmination of trial in near future.

According to Mr. Khan, there are large number of witnesses to be examined by the prosecution and with 9 accused facing the trial, the time be required for culmination of the trial cannot be approximated and rather with the pendency of huge number of trials, he expressed that it may consume considerable period of time.

Relying upon the decision of the Apex Court in case of Union of India vs. K.A Najeer (2021) 3 SCC 713, where speedy trial has been held recognized to be the right of the accused, Mr. Khan would pray for release of the

applicant on bail subject to any conditions, which the Court may impose.

Apart from this, he would also place reliance upon the order passed in case of co-accused Amit Singh, who on 14/11/2022, is directed to be released on bail, on appreciating the merits of the case as well as the long incarceration for four years with the trial not being in foresight.

4 The learned Special Public Prosecutor Mr. Bagade do not dispute the fact that the prosecution has a long way to go as it intend to examine approximately 60 to 70 witnesses for indicting the 9 accused persons. He also do not dispute the position that the charge has been recently framed, but according to him, looking to the seriousness of the accusations with the strong material compiled in the charge-sheet against the applicant, with the first application having been rejected, the second deserve to meet the same fate.

5 Considering the fact of the incarceration of the applicant for period of more than four years as on date and since the volume of the trial appear to be enormous with around 60 to 70 witnesses to be examined, as 9 accused are facing the charge in the trial, I find sufficient substance in the submission of Mr. Khan.

It is by not a well settled position of law that an under trial prisoner, cannot be incarcerated indefinitely and though the gravity of the accusations faced and the nature of offence with which he is charged may be a relevant factor, but a balance will have to be struck between the gravity of accusations and the period of incarceration.

A plethora of judgments have now recognized access of justice, including a right to fair trial as a part of 'due process'. Once it is evident that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the Courts would ordinarily be obligated to enlarge them on bail.

6 The purpose of grant of bail is neither punitive nor preventative but it is aimed at securing the appearance of the person at trial and deprivation of liberty prior to conviction definitely attract great hardship and since bail is the rule and jail is an exception, the Court shall lean towards release of an accused on bail and in a case like this when one can foresee the fate of a trial which is likely to be long drawn, the applicant cannot be continued to be detained as an under trial prisoner and deserve his liberty though he may take the consequences of the accusations

in the trial, once it is culminated.”

5. Learned Special PP opposed the application for bail on merits as well as on the ground that there are as many as 4 antecedents reported against the applicant. Learned Special PP submitted that parity will not apply as the accused Brijesh Naturam Patel has no antecedents to his discredit. Though the present applicant is having 4 antecedents pertaining to bodily offences to his discredit, considering the long period of incarceration, in my opinion, criminal antecedents by itself should not come in the way of the applicant in deriving the facility of bail as in any case, I propose to impose stringent conditions while enlarging the applicant on bail. The applicant can otherwise claim parity with the co-accused.

6. So far as the trial is concerned, charges have been framed. Learned Special PP states that the witnesses are attending, however, trial is not proceeding for one reason or the other. The delay is not attributable to the present applicant. The investigation is complete. The charge-sheet has been filed. In the facts and circumstances of the present case, I am inclined to enlarge the applicant on bail.

Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Satendra @ Sonu Ramji Pal in connection with C.R. No. 249 of 2018 registered with Kurar police station shall be released on bail on his furnishing P.R. Bond of Rs.50,000/- with one or more sureties in the like amount.
- (c) The applicant shall report to Dahisar Crime Branch (Unit-12) on every Sunday between 3:00 to 5:00 p.m.
- (d) The applicant 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 applicant shall not tamper with evidence.
- (e) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.
- (f) Except for attending the trial and for the purpose of reporting to Dahisar Crime Branch (Unit-12), the applicant

shall not enter the jurisdiction of Mumbai/Mumbai Suburban Districts after being released on bail, till the trial concludes.

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(h) It is made clear that if the applicant indulges in the similar type of offence in future, the same shall afford a ground to the prosecution to apply for cancellation of bail.

7. The application is disposed of.

(M. S. KARNIK, J.)