

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1049 OF 2023**

Shankar @ Shankarya Bhima Shinde ...Applicant
vs.
State of Maharashtra ...Respondent

Mr. Viral K. Rathod, Advocate for the Applicant.
Mr. S. R. Agarkar -APP for the Respondent.
Ms. Swati Lahane – API Kalva police station, Thane.

CORAM : S. M. MODAK, J.

DATED : 7TH JULY 2023

P. C. :

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State.
2. The parity is claimed by the Applicant-accused No.1, on the basis of bail granted to accused-Mamu Madrasi, by this Court as per order dated 9th January 2023. While granting bail, this Court has considered bail granted to co-accused Sandeep Chavan and Shiva Thakur. So also while passing said order, the Court has noticed the fact that yet charges are not framed, even though they are behind bar since 2013.
3. On this background, I have perused the charge-sheet papers.

Learned Advocate for the Applicant invited my attention to page No.152, which is part of supplementary statement of the first informant – Sayali Kadam. Whereas according to learned APP apart from the FIR, there is statement of eye witness by name Nilesh Sonawane. It is on page 73 and involvement of the Applicant is supported by recovery at his instance. The relevant station diary is on page 114. I have perused all these documents. The following facts emerges :

- (i) In the FIR dated 16th December 2014, the first informant, who is wife of the deceased has stated that on 16th December 2014, at about 2.00 am, the present Applicant along with others came with chopper and knives.
- (ii) The present Applicant threatened the deceased why you are sitting outside house so late and why deceased has lodged complaint against Paternal Uncle of the Applicant ?
- (iii) Thereafter the Applicant and others have assaulted the deceased with help of weapons.
- (iv) Whereas in supplementary statement, the first informant on page 152, has stated that the present Applicant along with

other accused persons assaulted the deceased with help of various weapons. Contention is that there is general allegation and no substantial role is assigned to the present Applicant.

- (v) Whereas the witness-Nilesh has also stated some facts as stated by the first informant in the FIR. Whereas in supplementary statement on page 154, he has also levelled general allegations about assaulting the deceased with weapons.

4. It is true that against accused-Sandeep Chavan, there is general allegation, so also against accused-Mamu. Those were considered by learned Single Judge. So while granting bail to Vinod Counder page 166, this Court has noted different roles alleged by the witnesses to that accused and hence, granted him bail.

5. One instance places the present Applicant on different footing. Even though the allegation about use of weapon may be general in nature, but it is present Applicant, who first threatened the deceased, as stated above. This circumstance makes his role different. So the rule of parity cannot be invoked. I am not with learned Advocate for the Applicant.

6. It is a fact that the Applicant is behind bar since 2015. Though on last date, it was submitted by learned APP after taking instructions that the charge is framed and witnesses were examined, today, after taking fresh instructions from the Investigating Officer present, he submits that yet the charge is not framed. It is the constitutional right of an undertrial to ask for expeditious trial and if it is not recognized, it amounts to denial of right. The facts and circumstances warrant to give certain directions to the trial Court for not starting trial.

7. On that court I could have granted bail to this Applicant today itself. However, I intend to grant some time to the trial Court for completing the trial. So if the trial is not finished within specified period, the Applicant would be entitled for bail. It can even be granted by the trial Court. At that time there is no need to consider merits of the matter because, it will be purely on the basis of delayed trial. Hence, the following order is passed :

- (a) Bail Application is dismissed.
- (b) The trial Court is directed to expedite the trial and finish it within six months.

- (c) If the trial is not finished within six months, the trial Court to grant present Applicant the bail, once he will prays for it.
- (d) Copy of this order be sent to the court seized of the matter.

[S. M. MODAK, J.]