

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

CRIMINAL BAIL APPLICATION. NO. 742 OF 2023

Rushikesh Ramdas Patil	...Applicant
Versus	
The State of Maharashtra	...Respondent

**WITH
INTERIM APPLICATION NO.1315 OF 2023
IN
CRIMINAL BAIL APPLICATION. NO. 742 OF 2023**

Abhijit Pradip Khandagale	...Applicant/Intervenor
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IN THE MATTER OF :

Rushikesh Ramdas Patil	...Applicant
Versus	
The State of Maharashtra	...Respondent

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Mr. Vinod Kashid, Advocate for the Applicant.

Mr. Aniket Ujjwal Nikam a/w Mr. Aashish Satpute a/w Mr. Piyush Toshniwal i/by Mr. Amit Icham, Advocate for Intervenor in Interim Application No.1315 of 2023.

Mrs. Anamika Malhotra, APP for the Respondent – State.

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CORAM	:	PRAKASH D. NAIK, J.
DATE	:	28th JUNE, 2023.

PER COURT:

1. The applicant is seeking bail in C.R. No. I-475 of 2016 registered with Narpoli Police Station, Dist. Thane for offences punishable under Sections 302, 307, 143, 147, 148, 149, 120-B of Indian Penal Code (for short "IPC") and Sections 3(1)(ii), 3(2) &

3(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short “MCOC Act”).

2. The prosecution case is that, on 24.10.2016, the complainant was informed that, his brother Banti Khandagale is assaulted with knife and he is lying in front of Shankar temple. He rushed to the S.S. Hospital at Kalher. His brother Ranjit (Banti) was being taken to ICU. His clothes were blood stained. He had sustained injuries on his head, forehead, right arm, elbow, abdomen and chest. On inquiry with Ranjit, he disclosed that he was assaulted by Akshay Nanda Patil and Bharat with knife and they took away gold chain and gold ring. He lodged the FIR on the same day for offences under Sections 307, 34 of IPC against Akshay Patil and Bharat. During investigation it was revealed that, Akshay Patil is the head of gang having criminal antecedents. The applicant is associated with gang. The accused hatched conspiracy to kill Ranjit Khandagale. The injured was declared dead on 27.10.2016. Provisions of MCOC were invoked. Applicant was arrested on 09.01.2017 on completing investigation, charge-sheet was filed.

3. The applicant preferred Criminal Bail Application No.518/2018 before this Court. It was rejected vide order dated 04.02.2019. Thereafter, another application for bail viz. Bail

Application No.407 of 2020 was preferred before vacation Court. It was allowed to be withdrawn by order dated 11th May, 2022.

4. Learned Advocate for the applicant submitted as under :-

- i. The applicant is in custody from 09.01.2017. There is no progress in the trial. Charge has not been framed.
- ii. The applicant has not delayed the trial. Long incarceration in custody affects the fundamental right of the applicant under Article 21 of the Constitution of India.
- iii. The prosecution has provided the list of 100 witnesses and even if the prosecution does not examine all of them, it is not clear as to when the trial would be concluded.
- iv. The applicant has not been named in the First Information Report (for short "FIR") and even in subsequent statements, no role of assault is attributed to the applicant. It is the case of prosecution that the applicant was instigating the other accused.
- v. The applicant is not involved in committing any other crimes with the head of gang.
- vi. The applicant is not having any criminal antecedents. In the year 2014 he was shown to have been involved in the case, while he was a juvenile and he has been discharged from the said case.

vii. The applicant is in custody for a period of about six and half years. Further detention of the applicant is not necessary. The applicant cannot be kept under incarceration for indefinite period.

viii. The applicant was aged around 19 years at the time of incident.

ix. Trial Court is overburdened with cases. Several cases are time bound.

x. The applicant has appeared for T.Y.B.A. examination through Jail.

xi. The applicant is not the assailant. There is no recovery from applicant.

xii. The applicant was produced before the Court on few occasions.

5. Learned Advocate for the Applicant has relied upon the following decisions:

i. *Union of India Vs. K.A. Najeeb*¹

ii. *Eklakh Rahim Shaikh@ Peti Vs. State of Maharashtra* passed by this Court in Bail Application No.3792 of 2022 vide order dated 27.03.2023.

¹ (2021) 3 SCC 713

iii. *Anil Shankar Patil Vs. The State of Maharashtra and Anr.* passed by the High Court of Bombay in Criminal Bail Application No.33 of 2022 vide order dated 29.07.2022

iv. *Gaur Robin Man Vs. The State of Maharashtra and Anr.* passed by the High Court of Bombay in Criminal Bail Application No.30 of 2022 vide order dated 24.01.2023.

v. *James Jaffrin Almeida @ Sam Vs. State of Maharashtra* passed by this Court in Bail Application No.175 of 2022 vide order dated 15.03.2022.

vi. *Ajay Motiram Thakare Vs. State of Maharashtra* passed by this Court in Bail Application No.515 of 2023 vide order dated 27.03.2022.

vii. *Ajay @ Lallan Dattatray Jadhav Vs. The State of Maharashtra* passed by the High Court of Bombay in Criminal Bail Application No.2681 of 2022 vide order dated 27.03.2023

viii. *Ajit Bhagwan Tiwde Vs. The State of Maharashtra* passed by this Court in Bail Application No.995 of 2021 vide order dated 19.01.2022.

ix. *Mahesh Munna Pal Vs. The State of Maharashtra* passed by the High Court of Bombay in Criminal Bail Application No.922 of 2018 vide order dated 03.03.2020.

6. Learned A.P.P submitted that the previous application for bail has been rejected by this Court on merits and there is no change in circumstances to entertain the present application. There is sufficient evidence to show the involvement of the applicant in the

crime. There are statements of witnesses which refer to the presence of the applicant at the spot of incident and instigating the other accused in commission of crime. Confession under Section 18 of the MCOC Act refers to involvement of applicant. The trial has been delayed by the applicant and the other accused. Repeated application were preferred on various grounds which were required to be decided by the Court. Discharge application preferred by co-accused is pending. The report submitted by the trial Court fortifies the fact that the trial has been delayed by the accused. There are ten accused in the case. The offence is of serious nature. The provisions of the MCOC Act are invoked in the present case. The prosecution was required to make an application under Section 309(1) of Cr.P.C. before the trial Court. It was urged before the trial Court that the charge may be framed against the accused and trial may be expedited. There was no delay on the part of the prosecution and the delay was caused by the accused by preferring applications. The trial may be directed to be conclude expeditiously.

7. Learned Advocate for the complainant/intervenor submitted that the applicant has played vital role in the crime. Deceased had suffered serious injuries. The applicant has been named in the statements of witnesses. There is sufficient evidence to show the

complicity of the applicant in the crime. There is no delay on the part of the prosecution to proceed with the trial. The report submitted by the trial Court about the status of trial may be taken into consideration. The decisions relied upon by the learned Advocate for the applicant are not applicable in the present case. In all those cases the trial was expedited by the Court and in spite of orders expediting trial, there was no progress in the case. This Court may direct the trial Court to decide the trial expeditiously. The case can be transferred to the Court which is not burdened with several expedited cases. Hence, the application for bail may be rejected.

8. It is not in dispute that the applicant was arrested on 09.01.2017. The charge is yet to be framed. The prosecution had provided the list of about 100 witnesses. May be that the prosecution would not examine all the witnesses. Even if half half of the witnesses are examined it would take substantial time to conclude the trial. Vide order dated 20.04.2023, trial Court was requested to submit the report about the status of trial. Pursuant to that, the report dated 04.05.2023 has been received by this Court. The report indicate that the learned trial Judge has taken charge of the Court on 13.10.2022. On that day the accused were not produced from jail. The special public prosecutor filed application

under Section 309(1) of Cr.P.C. The report refers to the most of events which had occurred thereafter. The applicant had preferred an application for bail vide Exhibit-85 on 05.11.2022. The accused No.2 had filed application Exhibit-109 seeking certain directions to the Prison Authority. The accused No.1 filed an application on 21.11.2022 calling for the medical report. On 15.12.2022 the Presiding Officer was on leave. On 20.01.2023 Court was busy in time bound matters. On 09.02.2023 accused Rohit Patil filed application. On 06.03.2023 accused No.9 filed application to obtain signatures on documents. Accused were produced on 09.03.2023. The Court was busy in time bound matter. Accused No.8 filed application for discharge. It was heard. On 13.04.2023 arguments on bail application were heard. The trial court is designated as Special Court under the provisions of MCOC Act. Several cases are pending in that Court. 62 cases are under MCOC and several Civil Cases. Apart from that the Court is adjudicating application for anticipatory bail relating to jurisdiction of Navapada, Thane Nagar, Navghar and Kalawa Police Station. Some of the Police Stations are very heavy. The report also makes reference to the cases made time bound by the high Court and the Supreme Court. In view of the directions, the High Court, some of the cases are being taken on day to day basis. There are directions

to dispose of the cases within short span of time. List of several cases which are time bound has been provided in the report. It is further stated that, there is huge pendency of cases and some of them are sensitive cases. Thus, the report refers to events from 13th October 2022 and reflects how the Court is burdened with work. Learned counsel for the applicant had placed for consideration the rojnama of the proceedings and submitted that on several occasions, the accused were not produced from jail. The report refers to application for bail preferred by applicant on 05.11.2022. The application preferred by prosecution also refers to applications preferred by accused before trial Court and this Court. The applicant is in custody from 09.01.2017. It cannot be construed that applicant have delayed the trial for six and half and years.

9. In the case of *Union of India (UOI) V/s K. A. Najeeb (supra)*, the Apex Court had observed as follows :

“Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent’s prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed

anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellants right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondents' rights guaranteed under Part III of our Constitution have been well protected."

10. In the case of *Chintan Vidyasagar Upadhyay V/s. The State of Maharashtra* in Special Leave to Appeal (Cri.) No.2543 of 2021 dated 17th September, 2021, the Apex Court granted bail to the Petitioner therein considering the fact that he was in custody for nearly 6 years. It was observed that the trial is in progress and 28 witnesses have been examined and 12 witnesses are yet to be examined. In the case of *Indrani Pratim Mukerjea V/s. Central Bureau of Investigation and Anr.* in Special Leave to Appeal (Cri.) No. 1627 of 2022 dated 2022 dated 18.05.2022, the Supreme Court granted bail to the Petitioner/Accused, taking into account the fact that she was in custody for 6 and half years, and even if fifty percent of the remaining witnesses are given up by the prosecution, the trial will not complete soon. In the case of *Paras Ram Vishnoi V/s. The Director, Central Bureau of Investigation* in Criminal Appeal No. 693 of 2021 dated 27th July, 2021, it was observed that no doubt the matter is serious and offence is heinous.

The Court is faced with the position where the Appellant amongst other accused has been in custody for eight and a half years. The prosecution evidence is over and statement of all the Accused is to be recorded under Section 313 of Cr.P.C. The person cannot be kept in custody pending the trial for indefinite period of time and taking into consideration the period of custody and the fact that the other Accused are yet to lead defence evidence, bail was granted to the Accused. In the case of *Avinash Anant Pawar @ Ajit Dada V/s. The State of Maharashtra* in Special Leave to Appeal (Crl.) No.1452 of 2022 dated 11th August, 2022, the Hon'ble Supreme Court granted bail to the Petitioner therein taking into consideration the fact that he had suffered incarceration for approximately 4 years. There was no likelihood of an early conclusion of the trial. In the case of *Sagar Tatyaram Gorkhe And Anr. V/s. The State of Maharashtra* in Criminal Appeal No.11 of 2017 dated 3rd January, 2017, the Apex Court had observed that the charges against the Accused are serious. Such charges will have to be balanced with certain other facts like the period of custody suffered and the likely period within which the trial can be expected to be completed. The Court noted that in the previous order the prosecution had made a statement that the trial would be completed within stipulated period and even then first witness was under examination. The

Court was pleased to grant bail. In the case of *Angela Harish Sontakke V/s. State of Maharashtra* in Criminal Appeal No.440 of 2016 dated 4th May, 2016, the Apex Court has held that undoubtedly the charges are serious but the seriousness of the charges will have to be balanced with certain other facts like the period of custody suffered and likely period with which the trial can be expected to be completed. It was noted that Accused was in custody for over 5 years and that there were about 200 witnesses proposed to be examined.

11. *In Ashim Alias Asim Kumar Haranath Bhattacharya alias Aseem Kumar Bhattacharya V/s. National Investigation Agency, (2022) 1 SCC 695*, it is observed that the charges against the Accused are undoubtedly serious but the charges will have to be balanced with certain other factors like the period of incarceration which the Appellant has undergone and the likelihood period within which the trial can be expected to be finally concluded. Paragraph Nos. 9, 10 and 11 of the decision are as follows :-

“9. We have to balance the nature of crime in reference to which the appellant is facing a trial. At the same time, the period of incarceration which has been suffered and the likely period within which the trial can be expected to be completed, as is informed to this Court

that the statement of PW-1/defacto complainant has still not been completed and there are 298 witnesses but indeed may counter-affidavit that it may examine only 100 to 105 witnesses but indeed may take its own time to conclude the trial. This fact certainly cannot be ignored that the appellant is in custody since 6-7-2012 and has completed nine-and-half years of incarceration as an undertrial prisoner.”

10. This Court has consistently observed in its numerous judgments that the liberty guaranteed in Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial is imperative and the undertrials cannot indefinitely be detained pending trial. Once it is obvious 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 him on bail.”

11. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. At the same time, timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice.”

12. This Court in the case of *Ajit Bhagwan Tiwde V/s. State of Maharashtra in Criminal Bail Application No.995 of 2021 dated 19th January, 2022*, taken into consideration several decisions of the Apex Court and based on the consideration that long incarceration affects the right of the Accused under Article 21 of the Constitution of India granted bail. The accused was prosecuted for offences under the provisions of MCOC Act. In various other cases relied upon by learned Advocate for applicant, bail was granted to accused by this Court on the ground of long incarceration in custody.

13. In the case of *Sanjay Chandra Vs. CBI*² it is observed that, deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused will stand his trial when called upon. The object of bail is neither punitive nor preventive.

14. In the decisions referred herein above, the accused were directed to be released on bail on the ground of long incarceration in custody. The charge is yet to be framed. The previous application for bail was rejected on merits on 04.02.2019. Assuming that the prosecution would not examine all the witnesses, even if half of witnesses are examined it is not clear as to when the trial would commence. Indeed, the apex Court and this

² AIR 2012 SC 830

Court had also observed that, sympathy for undertrials who are in jail for long term due to pendency of cases has to be balanced having regard to impact of crime. The Courts are required to perform balancing act, so as to reach a golden mean in between the rights of an prisoner and those of society in large. The contention of learned Advocate for applicant is that no role of assault is attributed to applicant and he is in jail for six and half years. It is pertinent to note that, the applicant is not having any criminal antecedents. Apparently the applicant was aged around 19 years at the time of incident. Considering all the aforesaid aspects, the case for grant of bail is made out.

ORDER

- i. Bail Application No.742 of 2023 is allowed and disposed off.
- ii. The applicant is directed to be released on bail in connection with C.R. No. I-475 of 2016 registered with Narpoli Police Station, Dist. Thane, on executing P.R. Bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- iii. The applicant shall stay out of the jurisdiction of Narpoli Police Station till the conclusion of trial.

- iv. The applicant shall not tamper with the evidence and shall not contact the witnesses in any manner.
- v. The applicant shall not leave the country without prior permission of the trial Court.
- vi. The applicant shall furnish the details of the place of his residence to the Investigating Officer and he shall report the nearest Police Station where he resides once in a month on first Saturday of the month between 11.00 am. to 1.00 noon till further orders.
- vii. Interim Application No.1315 of 2023 is disposed off.

15. At this stage, the learned counsel for the intervenor submitted that this order may be stayed for a period of four weeks. Considering the fact that the applicant has been directed to be released on bail on the ground of long incarceration in custody, the prayer is rejected.

(PRAKASH D. NAIK, J.)