

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1503 OF 2022

Brijesh Nathuram Patel .. Applicant
Versus
State of Maharashtra and ors .. Respondents
...

Mr.Muttahar Khan a/w Mr. Chowdhari Moinuddin, A.A.
Siddique i/b A.A. Siddique & Association for the Applicant.
Mr.Vaibhav Bagade, Special PP.
Mr.Prakash Sawant, API, DCB, CID (Unit 12), Dahisar,
Mumbai.

CORAM: BHARATI DANGRE, J.
DATED : 18th OCTOBER, 2023

P.C:-

1 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 Najeeb (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. Hence the following order.

: ORDER :

- (a) Application is allowed.
- (b) Applicant -Brijesh Nathuram Patel, shall be released on bail in connection with C.R.No. 249 of 2018 registered with Kurar Police Station on furnishing P.R. Bond to the extent of Rs.50,000/- with one or more sureties in the like amount.
- (c) He shall remove himself from the place where he was residing at the time of his arrest i.e. Prabhat Welfare Society, Akurli Road, Kandivali (E) Mumbai. He shall not reside within the jurisdiction of Kurar and Samtanagar Police Station.
- (d) Upon being directed to step out of this area he shall continue to stay in any place other than the aforesaid area and shall report to Dahisar Crime Branch (unit-12) on

every Saturday between 3:00 to 5:00 p.m.

(e) 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.

(SMT. BHARATI DANGRE, J.)