

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3075 OF 2022

Deepak Kisan Kalimbe ...Applicant
vs.
The State of Maharashtra ...Respondent

ALONGWITH
INTERIM APPLICATION NO. 1744 OF 2023
IN
BAIL APPLICATION NO. 3075 OF 2022

Umesh Sahebrao Gunjal ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. R. D. Suryawanshi - Advocate for the Applicant
Ms. A. S. Pai – PP alongwith Mr. H. J. Dedhia - APP for the
Respondent-State
PSI S. S. Khade – Unit-4 Ulhasnagar, Crime Branch Thane

CORAM : S. M. MODAK, J.

DATE : 04th JULY, 2023

P. C. :-

1. Heard learned Advocate Shri Suryawanshi for the Applicant/accused no. 4 and learned Public Prosecutor Ms. Pai. Officer is present.
2. The present Applicant is arrested on 28/12/2015 in

connected with C. R. No. 337 of 2015 registered at Ambarnath Police Station under Sections 302, 307, 142, 143, 147, 148, 149 and 341 of the Indian Penal Code. Charge-sheet is also filed. Even now the charge is framed on 18/02/2020 and seven witnesses are examined including the first informant, eye witness and other panch witnesses.

3. The Applicant claims that this is his first bail application before this Court. It is his own choice as to why he has not applied earlier. The fact is that he has applied when trial has begun, prosecution is certainly entitled to oppose the bail for the reason that trial has begun. Furthermore, the prosecution wants to rely upon the testimonies of those witnesses in order to show involvement of the present Applicant.

4. It is matter of record that the since 2015 till 2023, the trial has not finished. There are as much as 19 accused persons. Out of them, nine are released on bail as per Order of this Court. Whereas two were granted bail by the Court of the Additional Sessions Judge, Kalyan.

5. It is true that the Hon'ble Supreme Court as well as this Court while rejecting the bail applications has expedited the trial. One of such order is on page no. 159, dated 12/04/2018 passed by

the Hon'ble Supreme Court in case of Applicant *Gurunath Panglu Gaikar Vs. The State of Maharashtra*. His further application was also rejected by this Court on 11/02/2021. It is also true that even this Court has rejected the bail application filed by Keval Suresh Gaikar on 14/03/2022 and expedited the trial to be finished within a period of six months. Later on he was granted bail by this Court on 24/01/2023.

6. Whatever may be reason for not completing the trial till now, the facts remains that the trial is yet not completed either it may be on account of there was no presiding officer or it may be on account of not taking steps on behalf of the prosecution or it may be on account of non availability of the defence counsels. It is true that in earlier orders, there is reference about number of witnesses to be examined. On one occasion the number is 67 witnesses, now there is list of witnesses dated 28/06/2023 submitted before the trial Court by learned Special Public Prosecutor, it consists of 34 witnesses.

7. Now case is transferred to the Court of the Additional Sessions Judge presided over by Shri S. B. Kachare. One of such order dated 21/06/2023 passed by him is filed on record. It was the first date before him.

8. So far as role alleged against this Applicant, we are got the first informant's version. It is one Vinod Sudam Bhor, is on page no. 20A. He went on the motor cycle and when reached near Moriwali MSEB office, he noticed the deceased Pappu Gunjal being surrounded by 15 to 16 persons. He has named few of the assailants and out of them, the present Applicant is one amongst them. There is allegation that alongwith other assailants, he bet the deceased. It is submitted that in his subsequent evidence, he has stick up with this version. Whereas learned Advocate for the Applicant intends to rely upon the answers given during cross-examination.

9. Apart from this we have got version stated by the eye witnesses and one of them is one Sanket Shinde. His statement dated 28/12/2015 is at page no. 56. He was chit chatting in the Kamgar garden on 25/12/2015 at 10.15 a.m. to 10.20 a.m.. He heard noise of the vehicular accident. Initially, one Mahindra Pick up car came and gave dash to one motor cycle. A person by named Pintya Gaikar got down from Mahindra Pick up car and assaulted the motor cycle driver who is deceased Pappu Gunjal. At the same time, one white colour Innova car arrived at the spot. One Sachin Chavan

and his associates got down from the car alongwith weapons and they started beating the deceased. The witness further states that at that time, from Mahindra pick up vehicle and white colour Innova vehicle, the Applicant was sitting on the driver seat of the white colour Innova car.

10. The contention is that the first informant has given a different version and eye witnesses have given different version. It is claimed that there is no recovery of the weapons at his instance.

11. The Applicant relied upon the following orders of bail granted to co-accused.

- a) Abhishek Dilip Warghade – At page no. 168.
- b) Kewal Suresh Gaikar, passed by this Court on 24/01/2023 is at page no. 78.
- c) Ajay Motiram Thakre and Mayur Motiram Thakre, passed by this Court on 27/03/2023.
- d) Applicant Pawan Pralhad Khandekar has granted bail by the Sessions Court.

12. It is claimed that few of the orders are passed even after trial has begun.

13. Ms. Pai submitted that as now the trial has started and

Court is manned by Presiding Officer. Let trial be conducted in smooth manner with certain time bound manner and if it is not finished, the liberty can be granted to the Applicant to apply again for bail.

14. As trial has already started, about variance in the role alleged by the first informant on one hand and eye witnesses on the other hand I am restraining myself to make any comment. It is also true that one of the option available before this Court is again expedite the trial. In all there are 25 witnesses, out of them seven are examined. So even if this Court will again issue direction for expediting the trial, whether it is going to serve any purpose?

15. I do not find that it will serve any purpose. So I am inclined to grant bail to this Applicant. The reason is already direction to expedite the trial was given earlier. There are 19 accused persons and yet 18 witnesses is to be examined. It is not that the concerned Judge is seized of only one expedited matter. He must be having other expedited matters also and other under trial prisoners. So I think that it will be difficult to complete the trial even by fixing the period.

16. Considering the period already undergone and bail

granted to co-accused, the Applicant has made out the case for grant of bail. Hence the Order:-

- (i) Bail application is allowed.
- (ii) Applicant-Deepak Kisan Kalimbe arrested in connection with C.R. No. 337 of 2015 registered with Ambernath Police Station for the offence punishable under Sections 302, 307, 142, 143, 147, 148, 149, 341 of the Indian Penal Code and under Sections 4 and 25 of Indian Arms Act and Section 37(1) of the Maharashtra Police Act, be released on bail on furnishing Personal bond and surety bond in sum of Rs. 50,000/-.
- (iii) The Applicant is directed not to enter the territorial limits of the Ambernath Revenue Taluka.
- (iv) The Applicant is directed to supply his alternate place of residence to the Crime branch Unit No. 1-Thane prior to furnishing surety.
- (v) Applicant is directed to give attendance to the Office of the Crime branch Unit No. 1-Thane on every Friday from 10.00 a.m. to 12.00 noon until completion of the trial.
- (vi) Applicant shall not threaten the prosecution witnesses.
- (vii) Needless to say, violating of the condition above will make the Applicant liable for cancellation of bail after

notice.

17. It is made clear that the these are my prima facie observations and the trial Court shall decide the case on its own merits without influenced by the observations made in this order.

18. Bail Application is disposed of in the aforesaid terms and according Interim Application is disposed of.

19. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]