

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

CRIMINAL BAIL APPLICATION NO.1902 OF 2022

Nilesh Ravindranath Shukla	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Sudeep Pasbola, Advocate a/w. Jyoti R. Shahu, Ayush Pasbola for the Applicant.

Ms. Sangita D. Shinde, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 15th DECEMBER, 2023

P.C. :

1. This is the second occasion when the Applicant has approached this Court for his release on bail in connection with C.R. No.388/2018 dated 20.8.2018 registered at MIDC Police Station, Mumbai under Section 302 read with 34 of IPC. On the earlier occasion, the Petitioner had filed Criminal Bail Application No.109/2020. It was argued fully at that time; and when this Court had expressed disinclination to grant relief in that application, learned counsel for the Applicant had withdrawn that application unconditionally. That order was passed in said Criminal Bail Application No.109/2020 on

17.7.2021. After that there was no further progress in the trial at all and even the charges are not framed and, therefore, the Applicant has again approached this Court for his release on bail on the ground of long incarceration and also on the ground of merits of the matter.

2. Considering that there is no progress in the trial at all, I have heard learned counsel for the Applicant and learned APP and, therefore, I am entertaining this Application.

3. The Applicant was arrested on 25.8.2018. Since then he is in custody. The prosecution story is that the Applicant was entertaining a doubt in his mind that the deceased Avinash in this case was having affair with the Applicant's wife. The Applicant called the deceased to his Industrial Unit at MIDC, Andheri, Mumbai on 17.8.2018. The Applicant then committed his murder by assaulting him with hammer and inflicted injuries with knife. According to the prosecution case, the Applicant was helped by one Vashbahadur Singh in the actual assault. The third accused Ankit Dubey helped the Applicant in destroying the evidence.

The charge-sheet is filed against all three accused. The other two accused are already granted bail.

4. Learned counsel for the Applicant submitted that the case depends only on the circumstantial evidence. There are no eye witnesses to the incident. The motive attributed to him cannot be established through evidence of the witnesses. The other circumstance is of recovery of weapon. Out of the two weapons used, the knife was recovered from the industrial unit of the Applicant and the hammer was not found.

5. Shri Pasbola submitted that the material shows that after arrest of the Applicant, the key of the industrial unit was with the police and, therefore, the industrial unit was accessible to others. It was no more in exclusive possession of the Applicant at the time of recovery of the knife from the industrial unit. There is other circumstance of extra-judicial confession by the Applicant to his own wife, brother and one more person, but, that is a weak piece of evidence and there was no reason for the Applicant to make that confession.

6. Learned counsel for the Applicant submitted that

the next circumstance against the Applicant was 'last seen together' theory. However, there is no cogent evidence to show that the person who was seen with the Applicant was none other than the deceased. He, therefore, submitted that even on merit, the Applicant has a good case.

7. Shri Pasbola emphasized that there is absolutely no progress in the trial for more than five and half years. Even the charges are not framed. There is no likelihood of the trial beginning in the near future. There are many witnesses cited in the charge-sheet and, therefore, even if the trial starts, it will take a very long time to reach its conclusion. The Applicant has already been in custody for more than five and half years. Therefore, on this ground also, the Applicant deserves to be released on bail.

8. Learned APP opposed these submissions on merits. She submitted that the postmortem notes show that there were 28 serious injuries inflicted on the deceased. Therefore, it is a cruel offence. There is sufficient material against the Applicant, which is referred to by Shri Pasbola. She submitted

that this incriminating material is strong enough to convict the Applicant. She, therefore, strongly opposed grant of bail on merits of the matter.

9. As far as delay in the trial is concerned, learned APP produced a copy of the entire Roznama of the case, which is taken on record and marked 'X collectively' for identification. She submitted that the accused Nos.2 & 3, who are on bail, are not attending the court regularly. There is an NBW pending against the accused No.2. Therefore, the trial could not begin.

10. Learned APP also produced the medical report of the Applicant, which shows that his condition is being regularly monitored and he is under psychiatric treatment as per advice of Psychiatrist visiting Mumbai Central Prison from Sir J.J. Hospital. The medical advice was to continue with the medication. As of today, the Applicant's condition is stable. There were no fresh complaints about the Applicant's health.

11. I have considered these submissions. As far as recovery of the knife is concerned, there is a statement given by the Applicant on 29.8.2018 pursuant to which the recovery

was made. The panchnama shows that the office was opened with the key, which was with the police. After that the Applicant led the panchas and the police inside the office. He pulled a table and pointed out the place where that knife was lying. Thus, though the keys were with the police, the Applicant had knowledge where he had concealed the knife and it was recovered because the Applicant pointed that particular place where it was concealed. In any case, this is matter of trial. At this stage, this is an incriminating material against the Applicant. The other weapon i.e. hammer was not recovered.

12. The postmortem notes shows that there were 28 serious injuries, including incised wounds and injuries on the head. The cause of death was mentioned as “head injury with multiple stab and incised injuries”.

13. The motive was spoken by the wife and brother Sanjay of the Applicant.

14. In respect of the circumstance of extra-judicial confession, there are statements of the Applicant's wife

Priyanka, brother Sanjay and one Tribhuvan Singh. This witness Tribhuvan Singh has also stated about the motive that the Applicant was having suspicion against the deceased.

15. There is a statement of one Yadubans Tiwari in respect of 'last seen together' theory. He has seen the deceased with the Applicant at the place of incident at around the time when the incident had taken place. He was shown the photograph of the deceased and, therefore, he had identified him, from that photograph, as the person who was with the Applicant at the time of the incident.

16. Thus, taking into account all these circumstances together, there is sufficient incriminating material against the present Applicant. Therefore, on the previous occasion I had expressed my disinclination to grant relief and accordingly the Application was withdrawn. However, as of today, even the charges are not framed. Therefore, I have to take serious note of this fact.

17. The Roznama produced before me shows that that the Applicant himself has not caused any delay. On most of the

occasions, the Applicant was not even produced from the jail. An NBW is pending against the accused No.2. No efforts are taken to arrest the accused No.2 and to produce him before the Court. No efforts are taken to separate the case of the present Applicant from that of the other two co-accused. All this shows that there are serious lapses on the part of the prosecution in taking immediate steps to start the trial.

18. The learned trial Judge can also exercise sufficient control over the proceedings so that the trial could start, however, the Roznama does not indicate that any immediate and serious steps were taken to start the trial. Therefore, learned counsel for the Applicant is justified in making a grievance that the Applicant is in custody since 25.8.2018 without any progress in the trial whatsoever. Even the charges are not yet framed. There are many witnesses who are cited in the charge-sheet. Therefore even after the charges are framed, it will take a very long time for the trial to conclude.

19. The parents of the Applicant have tendered an affidavit before the Court in view of the medical condition of

the Applicant. They have undertaken to provide proper medical treatment to him and have also undertaken to keep him under control. That affidavit is taken on record and marked 'Y' for identification.

20. Considering these circumstances and the ground of delay in trial, I am inclined to grant bail to the present Applicant. Hence, the following order:

:: O R D E R ::

- i. The Applicant is directed to be released on bail in connection with C.R. No.388/2018 registered at MIDC Police Station, Mumbai on his executing a PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two sureties in the like amount.
- ii. The Applicant shall attend every single date before the trial Court and shall cooperate with the early disposal of the trial.
- iii. The Applicant shall not tamper with the evidence. He shall not cause any threat to any witnesses.

- iv. The Applicant shall report to the nearest police station from his residence every Sunday between 1.00 p.m. to 2.00 p.m..
- v. The Applicant shall surrender his passport with the investigating officer before being released on bail.
- vi. The Applicant shall not leave Mumbai City and Mumbai Sub-urban District without prior permission of the trial Court.
- vii. If there is violation of any of the above conditions, the Respondents are at liberty to take steps for getting the Applicant's bail cancelled.
- viii. With these observations, the Application is disposed of.

PRADIPKUMAR
PRAKASHRAO
DESHMANE

Digitally signed by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date: 2023.12.15
18:18:41 +0530

(SARANG V. KOTWAL, J.)

Deshmane (PS)