

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1779 OF 2023

Akash Satish Chandalia .. Applicant
Versus
The State of Maharashtra .. Respondent

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Ms.Sana Raees Khan for the Applicant.
Mr.S.R.Agarkar, A.P.P. for the State/Respondent.
PSI A. Latif Mujawar attached to Lonavala City Police Station,
present.

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CORAM: BHARATI DANGRE, J.
DATED : 26th SEPTEMBER, 2023

P.C:-

1. The Applicant came to be arrested on 25/09/2015 in C.R.No.130 of 2015 registered with Lonavala Police Station, which invoke Sections 302, 364, 342, 201, 120-B of the IPC. On completion of investigation, a charge-sheet is filed against him on 14/12/2015 and, presently, he is facing a trial before the Sessions Court, Pune.
2. This is the application for bail filed by him for the second time on two counts; the first being the long incarceration of the Applicant and till date of seven and half years and the second being, the release of co-accused by this Court, who is attributed a similar role as to that of the Applicant.

The factual scenario as regards both the grounds are not disputed by the learned A.P.P. Mr. Agarkar, but he would submit that as on date, trial has commenced and 15 witnesses are already examined. When specifically asked, how many witnesses the prosecution intend to examine, he would state the number may reach to 15.

3. Maintainability of the second bail application cannot be in doubt in the wake of the observations of the Hon'ble Apex Court in the case of *Babu Singh & Ors. Vs. The State of U.P.*¹ :-

“2. Briefly we will state the facts pertinent to the present petition and prayer and proceed thereafter to ratiocinate on the relevant criteria in considering the interlocutory relief of bail. Right at the beginning, we must mention that, at an earlier stage, their application for bail was rejected by this Court on September 7, 1977. But an order refusing an application for bail does not necessarily preclude another, on a later occasion, giving more materials, further developments and different considerations. While we surely must set store by this circumstance, we cannot accede to the faint plea that we are barred from second consideration at a later stage. An interim direction is not a conclusive adjudication, and updated reconsideration is not over-turning an earlier negation. In this view, we entertain the application and evaluate the merits pro and con.”

4. The Applicant faces a charge under Section 302 of IPC and the manner in which the alleged offence has taken place is undisputedly serious in nature.

The Complainant on 20/07/2015 gave a report about his son going missing, when he was in company of one Rajesh. The information was received that one Kisan Pardeshi has

¹ AIR 1978 SC 527

kidnapped her son Akshay and Rajesh and, hence the case was registered under Section 363 of the IPC. However, subsequently the dead bodies of these persons were found near Tamhani Ghat and, hence, Sections 302, 364, 201 and 120-B were added. The prosecution case is, Accused-Kisan, a notorious gangster and his associates, on removing their clothes had beaten them mercilessly for 4 to 5 hours, on the night when they were kidnapped and they succumbed to the injuries and, thereafter, their dead bodies were thrown, which were traced.

As far as the present Applicant is concerned, he is assigned a role of assault and the statements of the witnesses record his presence on the spot alongwith co-accused, who collectively assaulted Akshay and Rajesh, which caused their death.

5. Vikas @ Gogya Suresh Gaikwad, who is also assigned the similar role, is released on bail on 25/11/2022, upon his second bail application being entertained on the ground of delay in trial and parity, as the co-accused was released on bail on the ground of delay in trial.

Co-accused Yasmin Latif Sayyed, who had sought bail by filing multiple applications, had approached the Court and her prayer was not entertained on two occasions, but on the third time, when she sought her release vide Cri. Bail Application No.2152 of 2022 and Justice Sarang Kotwal, on 12/09/2022, without touching the merits of the matter, recorded as under :

5. On merits, it is not necessary to make any further observations. However, the report submitted by the learned

trial Judge mentions that the trial is likely to take at least 2 to 3 years to conclude. This is an unreasonable period and, therefore, on that ground I am entertaining this application. The report submitted by learned Additional Sessions Judge, Vadgaon, District Pune dated 08/09/2022 mentions following aspects of the matter:

- i) Till today no witness is examined in this case.
- ii) On 06/09/2022 the case was on board for the evidence. The informant was present. He filed an application seeking adjournment on the ground that he had given application for appointment of Special Public Prosecutor to conduct this case. After that the case was adjourned.
- iii) There are 14 accused in this case. They are represented by 7 different advocates.
- iv) The Court of Additional Sessions Judge is newly established at Vadgaon since 06/02/2022 and all the cases pending in the court at Pune pertaining to that jurisdiction are transferred to that court including the present case.
- v) In all there are 109 sessions and other cases of under trial prisoners pending before that court.
- vi) Different APPs attend the court proceedings for different period. The approximate tenure of their period was about 15 continuous days.
- vii) No permanent APP is attached to that court at present and perhaps on that ground the informant had sought adjournment.
- viii) The charge-sheet names 66 witnesses in the present case.
- ix) The accused are rarely produced from the Yerwada jail.
- x) The advocates representing the accused come from Pune.
- xi) Learned Judge has thereafter observed that, in such facts, much more time would be required to conclude the trial. He has further mentioned that, even if all the concerned parties assist properly to conduct the trial, still at least minimum period of 2 to 3 years may require to conclude the trial."

Recording that the Applicant was in custody since 17/09/2015 and the trial was delayed and not likely to conclude in near future, Yasmin was released on bail.

6. There is no reason why the benefit of long incarceration shall not be extended to the present Applicant.

The Hon'ble Apex Court in the case of *Union of India Vs. K.A.Najeeb*², had observed as under :-

² (2021) 3 SCC 713

“18. 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 appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.”

7. The seriousness of an offence and its heinous nature may be one aspect, which deserve a consideration while exercising the discretion to release an accused on bail, but at the same time, the factor of long incarceration of an accused as under-trial prisoner also deserve its due weightage. Pending the trial, a person cannot be kept in custody for an indefinite period of time and it clearly violate the fundamental right enshrined in the Constitution and time and again, has been considered to be a justiciable ground to exercise the discretion to release an accused.

Various orders/judgments from the highest Court are placed before me which have directed release of an accused on the ground of long incarceration and the impossibility of conclusion of trial in a time bound manner.

8. Despite directions being issued to conclude the trial in a time bound manner, has not yielded any result and in such circumstances, there is no option than to release an accused on bail. A balancing act, therefore, will have to be struck

between the gravity and seriousness of the charges, which the Applicant has to face and the long time consumed for conclusion of the trial, as the question of great significance, which all the stakeholders in the system must ponder is, after this long period of trial, if the accused is acquitted, how shall the system compensate him.

9. Deprivation of personal liberty, without ensuring speedy trial is not in consonance with Article 21 of the Constitution. Access to justice and speedy trial has been well recognised as hallmark of liberty guaranteed in Part III of the Constitution and when a timely trial is not possible, the accused cannot be made to suffer further incarceration, if he has already undergone significant period of the proposed sentence and in such circumstances, the Court would ordinarily be obligated to enlarge him on bail, keeping aside the seriousness of the accusations faced by him. In the wake of the above, the Applicant deserve his release, by the following order:-

: **ORDER** :

- (a) Application is allowed.
- (b) Applicant -Akash Satish Chandalia shall be released on bail in connection with C.R.No.130 of 2015 registered with Lonavala City Police Station on furnishing P.R. Bond to the extent of Rs.20,000/- with one or more sureties in the like amount.
- (c) The Applicant shall attend the trial on regular basis and two consecutive non-appearance in the trial

Court would entitle the prosecution to seek cancellation of his bail.

(d) The Applicant shall mark his attendance before the concerned police station on every Monday between 5.00 p.m. to 6.00 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.

(f) On being released on bail, the Applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in the event of any change therein.

(SMT. BHARATI DANGRE, J.)