

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

CRIMINAL BAIL APPLICATION NO. 1772 OF 2023

Vikram Singh Rajbir Singh S/o Sh. Rajbir Singh ...Applicant

Versus

The State Of Maharashtra

...Respondents

....

Mr. Aabad Ponda, Sr. Advocate a/w Mr. Samsheer R. Garud, S. Avhad
and Ms. Jusi Vallia i/by Jaykar & Partners, Advocate for Applicant

Mr. Amin Solkar, Spl. PP. a/w Ms. Pallavi N. Dabholkar, APP for the
Respondent – State.

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

PER COURT:

1. The Applicant is seeking bail in C.R. No. 92 of 2016 registered with M.I.D.C. Police Station, Mumbai, subsequently investigated by Crime Branch, SIT vide C.R. No.12 of 2016. The offences were registered under Sections 302, 193, 182, 201 r/w Section 34 of Indian Penal Code (for short 'IPC'). The Applicant was arrested on 12th July, 2016.

2. The prosecution case is that the Accused were involved in fake encounter of deceased Sandeep Gadoli. It is alleged that the Applicant was part of conspiracy in fake encounter of deceased.

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3. The previous application for bail preferred by the Applicant was rejected by this Court vide order dated 8th February, 2019.

4. Learned Advocate for the Applicant submitted that the Applicant had surrendered before the Respondents and was shown arrested on 12th July, 2016. Charge-sheet was filed against Accused Nos. 1 and 6 on 4th October, 2016. The bail application preferred by the Applicant was rejected by the Sessions Court on 30th March, 2017. The bail application of the Accused No.3 Jitendra Yadav and Accused No.5 Dipak Kakran was allowed by this Court vide order dated 14th November, 2017. The bail application of the Applicant was rejected by this Court vide order dated 8th February, 2019. Charge was framed by the trial Court on 14th November, 2019 against the Accused Nos. 1 to 6. Bail application of Accused No.4 Divya Pahuja was rejected by this Court on 24th February, 2021 and trial was expedited. Charge was re-framed by the trial Court on 22nd February, 2022. The application for cancellation of bail of Accused Jitendra Yadav and Dipak Kakran was rejected by this Court vide order dated 20th April, 2022. The first witness (PW-1) was examined on 2nd November, 2022. PW-2 was examined on 9th March, 2023. The examination-in-chief of the said witnesses is pending. Accused No.5 Smt. Sonia Pahuja was granted bail by this

Court on 21st March, 2023. Accused No.4 Divya Pahuja was granted bail by this Court and delay in trial on 28th June, 2023. The Applicant has not delayed the trial. The role of shooting at the deceased is attributed to the other Accused. It was alleged that the CCTV footage shows that the Applicant had pushed the fire arm lying on the ground in the breakfast lobby by his leg. The Applicant is not involved in the firing at the deceased and at the most he is charged for changing the scene of offence or concealing evidence. Delay in trial affects the right of the Applicant under the 21 of Constitution of India. The applicant is in custody for seven years. It is not clear as to when the trial would be concluded.

5. Reliance is placed on the following decisions:

- i. Union of India V/s. K.A. Najeeb, 2021 3 SCC 713.*
- ii. Chintan Vidyasagar Upadhyay V/s The State of Maharashtra, decided by the Apex Court in Petition for Special Leave to Appeal (Crl.) No. 2543 of 2021 dated 17th September, 2021.*
- iii. Indrani Pratim Mukerjea V/s Central Bureau of Investigation & Anr., 2022 SCC OnLine SC 695.*
- iv. Paras Ram Vishnoi V/s. The Director, Central Bureau of Investigation, decided by Apex Court in Petition for Special*

Leave to Appeal (Crl.) No.3610 of 2020 dated 27th July, 2021.

v. Avinash Anant Pawar @ Ajidt Dada V/s. The State of Maharashtra, decided by Apex Court in Petition for Special Leave to Appeal (Crl.) No. 452 of 2022 dated 11th August, 2022.

vi. Ashim Alias Asim Kumar Haranath Bhattacharya Alias Asim Harinath Bhatttacharya Alias Assem Kumar Bhattacharya V/s National Investigation Agency, 2022 1 SCC 695 : 2021 SCC OnLine SC 1156.

vii. Satender Kumar Anitl V/s. Central Bureau of Investigation and Anr, 2022 10 SCC 51 : 2023 1 SCC (Cri) 1.

viii. Order dated 3rd October, 2022 decided by this Court in Bail Application No.686 of 2022.

ix. Sagar Tattyaram Gorkhe and Anr. V/s. State of Maharashtra, 2021 3 SCC 725 : 2017 SCC OnLine Sc 2026.

x. Angela Harish Sonatakke V/s. State of Maharashtra, 2021 3 SCC 723 : 2016 SCC OnLine SC 1910.

6. Learned Special Public Prosecutor submitted that the previous application for bail was rejected by this Court on merits. There is no change in circumstance. The orders of the co-accused

can be distinguished. The Applicant was involved in fake encounter. He was present at the scene of offence. The offence is of serious nature. The order of co-accused granting bail by this Court is under challenge before Apex Court.

7. Learned Special Public Prosecutor has relied upon the following decisions:

- i. Ajwar V/s Niyaj Ahmed and Ors., (2022) 7 SCR 356.*
- ii. Ishwarji Nagaji Mali V/s. State of Gujarat and Ors., (2022) 2 SCR 694.*
- iii. Jayaben V/s. Tejas Kanubhai Zala and Ors., (2022) 1 SCR 18.*
- iv. Bhoopendra Singh V/s. State of Rajasthan and Ors., (2019) 14 SCR 539.*
- v. Mahipal V/s. Rajesh Kumar and Ors., (2019) 14 SCR 539.*
- vi. Prakash Kadam and Ors. V/s. Ramprasad Vishwanath Gupta and Ors., (2011) 6 SCC 189.*
- vii. Kalyan Chandra Sarkar and Ors. V/s. Rajesh Ranjan and Ors., (2005) 2 SCC 42.*
- viii. Shahazad Hasan Khan V/s. Ishtiaq Hasan Khan and Ors., (1987) 3 SCR 34.*

ix. Sohan Singh V/s. Union Territory of J & K, decided by Jammu and Kashmir High Court in Bail Application No.253 of 2020 dated 24th June, 2021.

x. Hemant Ramesh Gaikwad V/s. The State of Maharashtra, decided by this Court in Criminal Bail Application No.3039 of 2022 dated 15th February, 2023.

xi. Suresh Yadav V/s. State of U.P., decided by Allahabad High Court in Criminal Misc. Bail Application No.3279 of 2022 dated 29th April, 2022.

8. Learned Special Public Prosecutor submitted that in all the aforesaid decisions bail was refused or cancelled although the Accused was under incarceration for long time.

9. The previous application preferred by the Applicant was rejected on merits vide order dated 8th February, 2019. However, so far the prosecution has examined two witnesses. The prosecution is yet to complete evidence of second witness. The Applicant is in custody for a period of seven years. The Applicant was not involved in shooting/firing at the deceased.

10. In the case of *Union of India (UOI) V/s K. A. Najeed (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.”

11. In the case of *Chintan Vidyasagar Upadhyay V/s. The State of Maharashtra (supra)*, 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 *Khushi Ajay Sahjwani V/s. The State of Maharashtra(supra)*, the Apex Court granted bail to the Petitioner/ Accused considering the fact that she is a female undertrial prisoner, who has been in custody for more than three years and also considering the fact that the final report was filed way back on 28th July, 2018 and family situation of the Petitioner. In the case of

Indrani Pratim Mukerjea V/s. Central Bureau of Investigation and Anr. (supra), 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 (supra)*, 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 (supra)*, 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 (supra)*, 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 (supra)*, 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.

12. 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.”

13. 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.

14. Learned Special Public Prosecutor has relied upon certain decisions while opposing the prayer for grant of bail which are referred to hereinabove. In the case of *Ajwar V/s Niyaj Ahmed and Ors.(supra)*, the Apex Court has cancelled the bail granted by the High Court. It was observed that the Court had missed the gravity of the crime, role attributed to the Accused, recovery and his antecedents. It is pertinent to note that the Accused is in custody for a period about 2 years and 2 months. In the case of *Ishwarji Nagaji Mali V/s. State of Gujarat and Ors. (supra)*, bail granted by the High Court was under challenge. The High Court has not taken into consideration the material collected

during investigation. The prosecution case was that the Accused had hatched conspiracy with the co-accused to kill his wife by giving amount of Rs.2,00,000/- to driver for heating the deceased. The High Court granted bail without considering the seriousness of the case. In the case of *Jayaben V/s. Tejas Kanubhai Zala and Ors. (supra)*, the bail was sought to be cancelled before the Apex Court on the ground that the High Court had not considered the gravity of the offence. In the case of *Bhoopendra Singh V/s. State of Rajasthan and Ors. (supra)*, bail was granted by the High Court was cancelled by the Apex Court. The facts of the said case indicate that the Accused had preferred several applications before the High Court. Subsequently bail was granted to him. The Apex Court had observed that while entertaining five applications of the Accused the High Court had failed to consider the seriousness and gravity of the crime and specific role attributed to the Accused. The deceased was due to testify in the trial, in prior case under Section 307 of IPC. He was murdered shortly before he could testify in Court. In the case of *Mahipal V/s. Rajesh Kumar and Ors. (supra)*, it was observed that if the order refusing or granting bail does not furnish reasons, there is presumption of non application of mind. In the case of *Prakash Kadam and Ors. V/s. Ramprasad Vishwanath Gupta and Ors. (supra)*, bail was granted by the Sessions Court

which was cancelled by the High Court. The Accused were police and allegedly involved killing the victim in encounter. The Apex Court also considered seriousness of the case and observed that the High Court was justified in cancelling the bail. In the case of *Kalyan Chandra Sarkar and Ors. V/s. Rajesh Ranjan and Ors. (supra)*, bail was granted to the Respondent therein. Bail granted on his 8th bail application, was set aside by the Supreme Court and barely 11 days after the order of Supreme Court 9th bail application was filed by the Accused which was allowed by the High Court. It was observed that the High Court proceeded to reconsider the same questions viz. existence of *prima facie* case and value of retracted confession and practically overruled the findings of the Supreme Court as well as the High Court recorded in earlier order. In the case of *Shahazad Hasan Khan V/s. Ishtiaq Hasan Khan and Ors. (supra)*, it was observed that the Court had disregarded the facts of the case and considered the period of custody. The Court failed to consider the allegations of tampering of evidence. In the said case the eye witnesses had made serious allegations against the brother of the Accused. It was alleged that they were kidnapped and signatures and thumb impressions were obtained of blank papers and they were threatened with dire consequences and request was made by them for Police protection. In the case of *Sohan Singh*

V/s. Union Territory of J & K (supra), the Accused was facing trial for the offence under Section 302 of IPC. Bail was refused on the ground of delay in trial which had occurred due to COVID-19. In the case of *Hemant Ramesh Gaikwad V/s. The State of Maharashtra (supra)*, this Court had rejected the application preferred by the Accused although it was contended that he was in custody for substantial period of time. It was rejected on the basis of strong material against the Accused. The prosecution had made statement that the witnesses will be kept present and directions were issued to produce accused on every date of hearing. All these cases were decided in the facts of these cases.

15. In the present case the prosecution propose to examine several witnesses. The Applicant is in jail for seven years. The second witness is in the box. It is not clear as to when the trial would be over. The Apex Court in several decisions have granted bail to the Accused on the ground of long incarceration in custody. Considering these circumstances, the case of grant of bail is made out.

ORDER

- i. Criminal Bail Application No.1772 of 2023 is allowed;

ii. The Applicant is directed to be released on bail in connection with C.R. No. 92 of 2016 registered with M.I.D.C. Police Station, Mumbai which was subsequently investigated by Crime Branch, SIT vide C.R. No. 12 of 2016 for the offences punishable under Sections 302, 193, 182, 201 r/w Section 34 of Indian Penal Code and Sections 325 and 327 of the Arms Act on executing P.R. Bond in the sum of Rs.1,00,000/- with one or more sureties in the like amount;

iii. The Applicant shall report local Police Station where he resides once in a month on first day of the month between 11:00 a.m. to 1:00 p.m.

iv. The Applicant shall attend the trial Court on the date of hearing of the case regularly unless exempted by the Court.

v. The Applicant shall furnish his permanent residential address and contact details to the trial Court while executing the bail bond.

vi. The Applicant shall not tamper with the evidence.

vii. The Applicant shall not leave Indian without permission of the trial Court. The Applicant shall deposit his passport with the trial Court while executing the bail bond. If the Applicant does not have the passport, he shall file an

affidavit before the trial Court stating so while executing the bail bond.

viii. Application stands disposed off.

(PRAKASH D. NAIK, J.)