



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

BAIL APPLICATION NO. 1982 OF 2023

1. VIVEKANAND SUDHIR PISE @ VICKY
2. RAHUL PANDURANGAN MANDRI .. APPLICANTS
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Mr. Prashant Pande a/w Mr. Ashok Dhanuka, Mr. Dinesh Jadhvani,
Mr. Irfan Unawla, Mr. Ashish Jain i/b W3LEGAL LLP, for the
Applicants.

Ms. Rutuja Ambekar, APP for the State.

PI- Bhosale, DCB CID Unit 12 Mumbai present.

API- Sawant, DCB CID Unit 12 Mumbai present.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 12, 2023

P.C. :

1. Heard learned counsel for the applicants and learned APP for the State.

2. This is an application for bail in respect of the offence punishable under sections 143, 147, 148, 149, 302, 323, 342, 364, 395, 511 read with 120B of the Indian Penal Code (hereafter 'IPC' for short) registered vide C.R. No.129 of 2011 with Kurar Police Station. The incident is dated 04/06/2011. The FIR is dated 05/06/2011.

3. The application is filed by the original accused no. 14 and accused no. 15. Accused no. 14 was arrested on 09/08/2011 and the accused no. 15 was arrested on 17/08/2011. The applicants are incarcerated for more than 12 years.

4. Learned counsel for the applicants relied upon the following decisions in support of his submissions and also his submission on the ground of long incarceration which according to learned counsel entitles the applicants enlargement on bail.

(i) ¹Angela Harish Sontakke Vs. State of Maharashtra

(ii) ²Sagar Tatyaram Gorkhe and anr. Vs. State of Maharashtra

(iii) ³Union of India Vs. K.A. Najeeb

(iv) ⁴Paras Ram Vishnoi Vs. Director, Central Bureau of Investigation

(v) ⁵Chintan Vidyasagar Upadhyay Vs. State of Maharashtra

(vi) ⁶Ashim Alias Asim Kumar Haranath Bhattacharya alias Asim Harinath Bhattacharya Alias Aseem Kumar Bhattacharya Vs. National Investigation Agency

1 Petition for Special Leave to Appeal (Cri.) 6888/2015) passed by Supreme Court dt. 04/05/2016.

2 Criminal Appeal No. 11/2017 and 12/2017 arising out of Special Leave Petition(Cri.) No. 7947 of 2015 and 7949 of 2015 passed by Supreme Court dated 03/01/2017.

3 Criminal Appeal No. 98/2021 arising out of Special Leave Petition(Cri.) No. 11616 of 2019 passed by Supreme Court dated 01/02/2021.

4 Criminal Appeal No.693/2021 arising out of SLP(Cri.) No. 3610 of 2020 passed by Supreme Court dated 27/07/2021.

5 Petition for Special Leave to Appeal (Cri.) 2543/2021 passed by Supreme Court dated 17/09/2021.

6 Criminal Appeal No. 1525 of 2021 passed by Supreme Court dated 01/12/2021.

- (vii) ⁷Ajit Bhagwan Tiwde Vs. State of Maharashtra
- (viii) ⁸Indrani Pratim Mukherjea Vs. Central Bureau of Investigation
- (ix) ⁹Manoj Namdev Gajakosh Vs. State of Maharashtra
- (x) ¹⁰Avinash Anant Pawar @ Ajit Dada Vs. State of Maharashtra
- (xi) ¹¹Neeraj Vs. State of Maharashtra
- (xii) ¹²Darshan @ Darshu Vs. State of Karnataka
- (xiii) ¹³Divya Ashok Pahuja Vs. State of Maharashtra
- (xiv) Satendra Kumar Antil Vs. CBI

5. On the ground of long incarceration, there would otherwise have been no hesitation on my part in enlarging the applicants on bail. However, it is in the facts and circumstances of the present case, I am not inclined to enlarge the applicants on bail on the ground of long incarceration.

6. The applicants are proceeded with before the trial Court for the offence punishable under the aforesaid sections. The date of the incident is 04/06/2011. I am not stating the accusations in detail.

7 Bombay High Court dated 19/01/2022 in Bail Application No. 995 of 2021

8 Petition for Special Leave to Appeal (Cri.) 1627/2022 passed by Supreme Court dated 18/05/2022.

9 Bombay High Court dated 02/08/2022 I Bail Application No. 1012 of 2022.

10 Petition for Special Leave to Appeal (Cri.) 1452/2022 passed by Supreme Court dated 11/08/2022.

11 Petition for Special Leave to Appeal (Cri.) 11450/2022 passed by Supreme Court dated 16/01/2023.

12 Karnataka High Court dated 26/05/2023 in Bail Application No. 2674 of 2023.

13 Bombay High Court dated 20/06/2023 in Bail Application No. 354 of 2023.

Suffice it to observe that it is the prosecution case that 4 victims were taken at a secluded place by the 17 accused. The hands and legs of the 4 victims were tied. The victims were made to kneel down. The accusation is that these 4 victims were mercilessly and brutally murdered by the accused whose roles have been specifically set out. The accused no.1 and the applicants herein are assigned specific roles in the killings. Learned counsel for the applicants was at pains to point out that the trial was expedited. Even on 13/04/2023, the Hon'ble Supreme Court in the course of transfer petition [Transfer Petition (CRL.) Diary No.7227 of 2016] filed by the accused no.1 passed the following order.

“ We have heard learned Amicus Curiae appearing in this matter.

Learned counsel for the State submits that the trial is likely to conclude within next three months.

In such circumstances, we decline to interfere in the present petition. The petition is, accordingly, dismissed.

However, we request the Trial Court to conclude the trial within three months.”

7. So far as the trial is concerned, all witnesses have been examined. The trial reached the stage of recording section 313 statements of the accused. I am informed that it is at this stage, the accused no.1 moved an application under section 10 of Maharashtra Control of Organised Crime Act, 1999 ('MCOCA Act', for short) for stay

of the trial. It was prayed by the accused no.1 that the trial be kept in abeyance as proceedings under the MCOC Act was pending against him. The trial Court passed an order allowing the application and ordered that the trial is kept in abeyance till the conclusion of the Special Case No. 576 of 2020. Learned APP submitted that the proposal has been sent for challenging the order of the trial Court.

8. It is material to note that it was at the instance of the accused no.1 that the trial has been stayed at the very fag end. The Hon'ble Supreme Court had requested the trial Court to conclude the trial within 3 months on the petition filed by the accused no.1. At the stage when section 313 statements were to be recorded, it was at the instance of the accused no. 1 himself that the trial has been stayed.

9. Learned APP invited my attention to the deposition of the evidence of the approver. I do not wish to make any observations at this stage which will influence the trial. Learned counsel submitted that in the 164 statement of the witnesses, role of the applicants has not been spelt out. However, now the evidence has been recorded. The trial which otherwise would have concluded, is protracted at the instance of accused no.1 when an application was made at the stage of recording section 313 statements of the accused. It is of course not

open for me in this application to comment on the legality of the order granting stay to the trial.

10. Learned counsel also relied upon the notification of the Ministry of Home Affairs dated 27/09/2014 in the nature of guidelines on reckoning half-life of time spent in judicial custody of under-trial prisoners under section 436A of Code of Criminal Procedure. In the facts and circumstances of the present case, I am not inclined to enlarge the applicant on bail on the basis of these guidelines. I am informed that the applicant no. 2 is HIV positive. It is not the contention that the medical facilities in the jail are inadequate to treat the applicant no.2. The jail authorities to ensure every possible medical attention is provided to the applicant no.2.

11. The accusations against the applicants are regarding the brutal and heinous manner in which the offence is committed killing 4 victims in a cold blooded manner. In the light of the materials on record, the nature of the accusations, and in view of what is observed hereinbefore, I am not inclined to allow the application. The application is rejected.

(M. S. KARNIK, J.)