



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

BAIL APPLICATION NO. 2834 OF 2023

KUNAL SURYAKANT SALUNKHE ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

**WITH
BAIL APPLICATION NO. 461 OF 2023**

ANAND @ ANDY RAJAN CRUZ ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

**WITH
INTERIM APPLICATION NO. 3476 OF 2023
IN
BAIL APPLICATION NO. 461 OF 2023
WITH
INTERIM APPLICATION NO. 3477 OF 2023
IN
BAIL APPLICATION NO. 2834 OF 2023**

KUNAL RAMNATH MHATRE ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Adv. Saurabh Ghag a/w Adv. Divya Bhatia for the Applicant
in BA/2834/2023.

Adv. Niranjan Mundargi i/b Adv. Kunal Ambulkar for the
Applicant in BA/461/2023.

Ms. Veera Shinde, APP for the State.

API Rajratna Khairnar, Panvel City Police Station.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 26, 2023

P.C. :

- 1.** Heard learned counsel for the applicants and learned APP for the State.
- 2.** These are the applications for bail in respect of the offence punishable under Sections 363, 365, 302, 201 read with 120-B, 34 of the Indian Penal Code (IPC) registered on 09/02/2013 vide C.R. No.59 of 2013 with Panvel City Police Station, Raigad.
- 3.** The date of the incident is 08/02/2013. The applicant-Anand @ Andy Rajan Cruz is accused No.2. The applicant-Kunal Suryakant Salunkhe is accused No.4. There are in all 4 accused. Accused No.3 has been enlarged on bail. Accused No.1 is in custody. It is the prosecution's case that there was some work which the deceased had promised to do on behalf of accused No.1. The deceased was working as a Clerk in CIDCO office. As there was a failure on his part to do the work as promised, the accused took the deceased in their car and murdered him. So far as the applicant- Anand is concerned, as far back as on

04/02/2015, this Court had enlarged him on bail. However, said bail was cancelled by the Supreme Court by order dated 18/08/2015. The applicant- Anand was taken into custody.

4. Presently, bail is requested on the ground of long incarceration. Learned APP has filed a detailed affidavit submitting that the trial has commenced and as many as 30 witnesses have already been examined. It is further submitted that the prosecution proposes to examine 6 more witnesses whose names are set out in the said affidavit. It is, therefore, submitted that at the highest the trial Court should be directed to conduct the trial on day to day basis but the applicants should not be enlarged on bail considering the gravity of the offence.

5. In ordinary course, despite the period of incarceration being this long i.e. almost 10 years and 8 months, I would have hesitated enlarging the applicants on bail considering that only 6 witnesses remain to be examined and instead have preferred to expedite the trial stipulating an outer limit. It is, however, pertinent to note in the facts of the

present case that the application for bail by the accused- Anand was filed on 09/02/2023 and on 14/02/2023 this Court passed the following order:-

"1. The applicant is in jail for about 10 years. The learned APP submits that the trial is almost over. Considering the facts and circumstances, the trial Court shall endeavour to conclude the trial as early as possible.

2. List the application on 14 March 2023."

It is thus seen that this Court had directed the trial Court to make endeavour to conclude the trial as early as possible as far back as in February 2023 when the applicants had completed incarceration for 10 years as undertrials. It is then pertinent to note that when the application was heard on 13/09/2023, the following order came to be passed:-

"1. Learned APP on instructions submitted that the trial is likely to be concluded within a period of ten days as 38 witnesses are already examined. Today the matter is listed before the trial Court for recording evidence.

2. List the application on 27.09.2023 fairly high on board."

6. Thereafter on 03/10/2023, this Court passed the following order:-

"1. The applicant is in custody for more than 10 years and 9 months. The period is undoubtedly long.

2. Learned counsel for the applicant insisted that the applicant should be enlarged on bail only on the ground of long incarceration. It is, however, pointed out that the trial is progressing. Learned counsel for the applicant made a grievance that on 13/09/2023, learned APP, on instructions, had submitted that the trial is likely to be concluded within a period of ten days as 38 witnesses are already examined. Now it is the stand of learned APP that three witnesses only remain to be examined.

3. The trial Court is requested to expeditiously proceed with the trial and preferably on a day-to-day basis commencing from 12/10/2023. The prosecution or the applicant herein will not request for any unnecessary adjournments and co-operate with the trial Court.

4. Stand over to 20/10/2023, high on board."

7. Then when the matter was next heard on 20/10/2023, the following order came to be passed:-

"1. The applicant is in custody for more than 10 years and 9 months.

2. Learned APP to file an affidavit by the next date as to how many witnesses they propose to examine as I am informed by the learned counsel for the applicant that since February 2023, the prosecution is assuring that they propose to examine 4 witnesses.

3. Stand over to 26/10/2023, high on board.

4. The trial Court is once again requested to consider for hearing of the trial on a day to day basis.

5. This order be placed before the trial Court."

8. Learned APP, on instructions, was at pains to point out that the trial is now scheduled on 30/10/2023, 31/10/2023 and 01/11/2023 and in such circumstances, the hearing of this application be deferred, as in any case, the trial is likely to conclude soon. It is further submitted that even from the Roznama dated 24/04/2023 it is apparent that from 06/05/2023 to 26/05/2023, it is the advocate for the accused who had requested for adjournments as he was to go abroad for some personal work. It is, therefore, submitted that the trial is protracted at the instance of the present applicants. However, except for the period from 06/05/2023 to 23/05/2023, there is nothing on record to indicate that the trial is protracted at the instance of the applicants.

9. In the affidavit which is filed today, the prosecution has stated that till today 30 witnesses are examined while 6 witnesses are yet to be examined. In such view of the matter, I am of the opinion that the applicants now should be enlarged on bail on the ground of long incarceration as though the trial has commenced and 30 witnesses are

examined, the trial is being protracted not because of the applicants. The applicants shall suffer the consequences post-trial if found guilty. There is nothing on record to indicate that the applicants are a flight risk and that they will evade attending the trial. Learned counsel for the applicants assures this Court that the applicants will cooperate with the trial Court and will not seek any unnecessary adjournments and they will remain present on each and every day of the hearing of the trial. The statement is accepted. In this view of the matter, the applicants can be enlarged on bail. Hence, the following order :-

ORDER

- (a) The applications are allowed.
- (b) The applicants- Kunal Suryakant Salunkhe and Anand @ Andy Rajan Cruz, in connection with C.R. No.59 of 2023 registered with Panvel City Police Station shall be released on bail on their furnishing P.R. Bond of Rs.1,00,000/- each with one or more solvent sureties each in the like amount.
- (c) The applicants shall attend the Investigating Officer of Panvel City Police Station twice a week, every Wednesday and Sunday, between 11.00 a.m. and 2.00 p.m. except on

the day the trial is scheduled.

(d) The applicants 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 applicants shall not tamper with evidence.

(e) On being released on bail, the applicants shall furnish their contact numbers and residential addresses to the Investigating Officer and shall keep him updated, in case there is any change.

(f) The applicants shall not leave Mumbai/Mumbai Suburban, Thane and Raigad Districts after being released on bail, till the trial concludes.

(g) The applicants shall attend the trial regularly. The applicants shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(h) The applicants shall surrender their passports, if any, to the investigating officer.

10. The bail applications are disposed of. All interim applications stand disposed of.

(M. S. KARNIK, J.)