

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

CRIMINAL BAIL APPLICATION NO.3117 OF 2022

Kewal Suresh Gaikar ...Applicant

Versus

State Of Maharashtra ...Respondent

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Mr. Raju Suryawanshi, Advocate for the Applicant.

Mr. Pratap Manmohan Nimbalkar a/w Mr. Pratik Deore and Mr. Parth Phadtare Advocate for Original Complainant.

Mr. A.S.Patil, A.P.P. for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 24th JANUARY, 2023.

PER COURT:

1. This is an application for bail in C.R. No.I-337 of 2015 registered with Ambarnath Police Station, Dist. Thane for offences punishable under Sections 302, 307, 142, 143, 147, 148, 149, 341 of Indian Penal Code (for short “IPC”) and Sections 4 & 25 of the Indian Arms Act.

2. The First Information Report (“FIR”, for short) was lodged by Vinod Bhor on 25th December, 2015 alleging that, informant is carrying on business of supplying material to developers at Ambarnath. Municipal Councillor Ramesh Sahebrao Gunjal @

Pappu Gunjal was conducting business of supplying building materials and labour to builders and factories. The first informant was working for him. On 25th December, 2015, at about 10:15 a.m., the first informant went to meet deceased Pappu Gunjal at his house. He was informed that Mr. Gunjal has gone to Saloon at Morivali Naka. The complainant immediately went to Morivali Naka. While proceeding through MSEB office, he noticed that Pappu Gunjal was surrounded by 15 to 16 persons. They were armed with weapons like sword and chopper. They assaulted Pappu Gunjal. The assailants were Sachin Chavan, Pintya Gaikar, Ramdas, Vishal Jhaveri, Mayur Thakre, Jagdish Thete, Deepak Kalimbe, Guttu Vargade, Omkar Gaikar, Keval Gaikar, Ajay Thakre, Shankar Chalwadi, Ashish Shrivane and others. Nitin Gunjal came to the spot of incident on motor cycle from village Morivali. Shankar Chalwadi was holding chopper, Pintya Gaikar was holding sword. Ramdas Gaikar and Omkar Gaikar were having choppers in their hand. While assaulting the victim they were shouting that they should finish the victim. After the assault, the assailants sat in Innova car and motorcycle and left towards Morivali Naka. Four months ago, Shankar Chalwadi and Ashish Shrivane had assaulted Lakhiya Shende, manager of Pappu Gunjal. Pappu Gunjal was taken to hospital. He was declared dead. Supplementary

statement of complainant was recorded on 28.12.2015. In the said statement it was stated that, the deceased was councillor at Ambernath Municipal Council. Due to his influence he was getting contracts of material supply and labour supply and labour supply. Pintya Gaikar, Mayur Thakare, Sachin Chavan, Vishal Jhaveri were finding it difficult to get contracts of material/labour supply. Pappu Gunjal was killed on account of enmity and business rivalry.

3. Accused Gurunath Gaikar preferred application before this Court seeking bail. The application was rejected by order dated 07.08.2017. Thereafter he preferred Special Leave Petition before the Apex Court seeking bail. The Hon'ble Apex Court did not grant bail but vide order dated 12.04.2018 directed concerned trial Court to expedite the trial.

4. The co-accused Jagdish Balwant Thete had preferred Bail Application No.1060 of 2018 before this Court, which was allowed vide order dated 22.03.2019.

5. Gurunath Gaikar preferred another application for bail before this Court. The application was rejected by order dated 11.02.2021. However the trial was expedited.

6. The applicant preferred an application for bail before this Court which has been rejected vide order dated 21.11.2019.

7. Accused Ashish Amrut Sawane @ Ashish Amarappa Sawale had preferred Bail Application No.345 of 2020 before this Court. The said application was allowed vide order dated 27.10.2021. While allowing the said application it was observed that, except the first informant, none of the eye witnesses to the incident named the said accused as assailant or even do not talk of his presence when the deceased was assaulted. One antecedent against him under Section 395 & 397 of IPC would not keep him away from his release on bail. He was in custody since 25.01.2017. He cannot be incarcerated too long in the wake of material compiled against him in the charge-sheet and deserves to be released on bail.

8. Another application for bail was preferred by the applicant viz. Criminal Bail Application No.4502 of 2021. While adjudicating the said application, it was urged on behalf of the applicant that, he is in custody from 21.11.2016 and there has been delay in trial. There is no progress in trial. The prosecution submitted that the trial can be expedited. The prosecution is willing to proceed with the matter on day to day basis. The prosecution proposes to examine about 25 to 30 witnesses. The prosecution is ready to proceed with the trial expeditiously. Learned APP had tendered Report dated 14.03.2022 submitted by the Police Sub Inspector,

Crime Branch. Considering the said report and without going into the aspects of who delayed the trial, the application was rejected by order dated 14.03.2022 and the trial was expedited. The trial Court was requested to conclude the trial within a period of six months. The applicant was granted liberty to prefer fresh application for bail in the event the trial is not concluded within 6 months.

9. Abhishek Dilip Warghade was granted bail by this Court vide order dated 11.10.2022. While granting bail it was observed that, though the Court was conscious of the seriousness of the accusations and role attributed to the said accused was persuaded to consider the argument of learned counsel for the Applicant for securing his liberty is, applicant's long incarceration. Despite the directions being issued in the year 2018 for the first time and in the year 2022, for expediting the trial, it is not yet concluded though an attempt is made on behalf of the prosecution to submit that the delay is attributed to the accused. The Court observed that the accused cannot be further incarcerated as seriousness of the charge though may be looked into, it need to be balanced when the factors like period of custody and the period within which the trial is likely to be concluded. The accused is in custody for over 6 years and the

trial is proceeding at snail speed. Reference was made to the decision of the apex Court in the case of *Union of India Vs K.A. Najeeb*¹.

10. Accused Santosh Balram Vishe preferred application for bail before this Court viz. Bail Application No.1025 of 2021. The said application was allowed by this Court vide order dated 07.12.2021.

11. The Court of Sessions was pleased to grant bail to accused Pavan Pralhad Khandekar vide order dated 19.11.2022.

12. Learned Advocate for the applicant submitted that the applicant is in custody for a period of six years. The trial Court is vacant since last one month. Although the trial has been expedited, it has proceeded with snails speed. Several persons were granted bail. Co-accused with similar role has been granted bail by this Court. The applicant is entitled for bail on the ground of parity. Except the first informant no other witness has named the applicant. Jagdish Thete, Ashish Shrivane, Abhishek Warghade were also named in FIR having assaulted the deceased. They are granted bail by this Court. Charge was framed on 18.02.2020. Till the month of September 2021, the prosecution did not submit witness list. In September 2021, the prosecution submitted list and

¹ 2021 3 (SCC) 713

proposed to examine 74 witnesses. Despite directions of apex Court, trial was not heard expeditiously. Vide letter dated 26.11.2018, the learned District Judge-4 and Additional Sessions Judge, Kalyan addressed letter to DGP, Thane and informed her to take positive steps in the case for early disposal. No steps were taken for expeditious trial. On 14.12.2022, prosecution preferred application before trial Court for adjournment on the health ground of Special PP. The accused filed reply and stated that there could be no objection on ill health of public prosecutor. However on the previous date not a single witness was made available for recording evidence. The trial Court vide order dated 14.12.2022 had observed that, substantial number of accused are undertrial and the matter has been lingering on one or other reason despite trial was made time bound by apex Court and High Court. On the previous date, though summons were served witnesses did not appear and bailable warrant was required to be issued. Mere seeking issuance of warrants against the absent witnesses would not absolve, the prosecution of its responsibility to ensure that witnesses are in attendance so that trial is not hampered.

13. Learned A.P.P. submitted that the trial has commenced. The prosecution will examine 8 more witnesses. The trial is not

delayed by the prosecution. The previous applications of the applicant were rejected by this Court on merits. There is no change in circumstances to entertain the present application for bail. Non cognizable complaint has been registered against the applicant. The applicant has been named in the FIR. He was absconding for a period of nine months before his arrest. The applicant has criminal antecedent registered for offence under Section 143, 147, 149, 427 of IPC. The trial would proceed expeditiously. The applicants involvement is disclosed in FIR. Hence, application may be rejected.

14. Learned Advocate for the complainant submitted that, the accused have delayed the trial. Lengthy cross examination was conducted to delay the trial. The offence is of serious nature. The nature of injury is required to be taken into consideration. There are 19 accused in the case. 13 accused are in custody. The trial Court was vacant. The trial would proceed expeditiously. Earlier applications were rejected. The accused had preferred several applications which delayed the proceedings. The accused would tamper with evidence.

15. It is pertinent to note that, the applicant is in custody from 21st November 2016, i.e. for period of more than six years. The

trial was expedited by the apex Court vide order dated 12.04.2018. While rejecting the application for bail preferred by co-accused Gurunath Gaikar, this Court vide order dated 11.02.2021 expedited the trial. This Court while rejecting the previous application of applicant had granted liberty to the applicant to prefer fresh application for bail, in the event, the trial is not concluded within six months. While adjudicating the aforesaid application for bail, it was urged that the trial can be expedited and the prosecution would examine witnesses on day to day basis. Vide order dated 14.03.2022 the trial Court was directed to conclude trial within six months. Jagdish Thete was granted bail by order dated 22.03.2019. Ashish Sawane was granted bail by this Court by order dated 27.10.2021. Abhishek Warghade was granted bail vide order dated 11.10.2022. The Sessions Court granted bail to Shankar Addirappa Chavadi vide order dated 07.10.2022. All these accused were named in the FIR as assailants. While granting bail to Abhishek Warghade this Court had observed that despite trial being expedited in 2018 and 2022, it is not yet concluded. Bail was granted on long incarceration of the accused in custody. The case of applicant cannot be distinguished from the said accused who has been admitted to bail. The learned Sessions Judge while granting bail to the accused Pavan Pralhad Khandekar by order

dated 19.11.2022 has observed that, since the learned Judge had resumed in June 2022, till date, evidence of PW-2 to PW-7 was recorded while last lap of cross examination of PW-1 completed before him. The Court is burdened with old civil and criminal matters and more than 75 criminal cases wherein accused are undertrial. Some of those cases like present one are made time bound or expedited by High Court or apex Court. The court would be doing best possible to conduct expeditious trial, but there are limitations or practical difficulties which cannot be denied. Both parties in this matter are represented by counsels who are outstation counsels and it becomes difficult to accommodate everybody at all time. These observations of trial Court are worth noting. This Court is conscious of the fact that, trial Court is overburdened. Neither parties have attributed the delay in trial to the Court. Bail is granted by this Court on account of long incarceration in custody. Considering the circumstances as above applicant can be granted bail.

16. Hence, I pass the following Order :

ORDER

- i. Criminal Bail Application No.3117 of 2022 is allowed;
- ii. The applicant is directed to be released on bail in connection with C.R.No.I-337 of 2015 registered with

Ambernath Police Station, Dist. Thane on executing P.R. Bond in the sum of Rs.25,000/- with one or more local sureties in the like amount;

iii. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with the prosecution evidence.

iv. The applicant shall not step in Ambernath Taluka till conclusion of the trial.

v. The applicant shall mark his presence before the Crime Branch, Thane (Unit – 1) on every Friday between 10.00 a.m. to 2.00 p.m.

vi. Failure to report to the Police Station as directed, without prior permission of the officer to whom he is reporting on more than two occasions, will entitled the prosecution to move for cancellation of bail

vii. Bail Application is disposed of accordingly.

(PRAKASH D. NAIK, J.)