

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

BAIL APPLICATION NO.3137 OF 2022

Arshad Ayub Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

...

Mr. K.T. Thomas with Mr. Ameya Mahadik and Mr. Sourav Chettri i/b.
M/s. Law Well and Chartered for the Applicant.

Mr. S.H. Yadav, APP for the Respondent -State.

Mr. Abhijit Mane, PSI, Khar Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 19th JULY, 2023.

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1. This is the fourth bail application filed by the aforesaid Applicant, who is facing trial in Sessions Case No.260 of 2016 pending on the file of learned Additional Sessions Judge, 58th Court, Fast Track Sessions Court of Seweree, Mumbai. The said case arises from C.R. No.477 of 2015 registered with Khar Police Station, Mumbai for the offences punishable under Sections 302 and 120 B of the IPC r/w 37(A) of the Maharashtra Police Act.

2. The case of the prosecution in brief is that the Applicant and the co-accused had entered into a criminal conspiracy to eliminate

the deceased -Rizwan. It is alleged that pursuant to the said conspiracy the Applicant committed murder of the deceased. Hence, the aforesaid crime came to be registered against the Applicant pursuant to the FIR lodged by Saif Ariz Mirza on 29/09/2015. The Applicant was arrested on 29/09/2015 and is in custody till date.

3. Mr. K.T. Thomas, learned counsel for the Applicant states that till date only two witnesses have been examined and the evidence of the third witness is being recorded. The Applicant seeks bail mainly on the ground of delay in trial.

4. The first bail application filed by the Applicant was dismissed on 17/01/2017 on the ground that three incriminating circumstances viz. (i) the clothes of the Applicant were stained with blood and he was wearing a silver chain, which matched with the description given by the First Informant; (ii) The Applicant had fresh injuries on his person and; (iii) the Applicant was having keys of the Honda motor cycle, lent to him by his friend, indicate involvement of the Applicant in the crime. The Applicant had challenged the said order before the Apex Court in Special Leave to Appeal (Crl) No.10767 of 2019, which came to be dismissed with directions to the Trial Court

to proceed with the trial expeditiously.

5. The second Bail Application No.1895 of 2018, was withdrawn and once again directions were given to the Trial Court to expedite the trial and as far as possible to conclude recording of evidence within 10 months from the date of framing of charge.

6. The records reveal that the charge was framed on 25/06/2019, even though as per the order dated 26/11/2018 the trial was to be concluded by September-2019. Till date, the evidence of only two witnesses has been recorded and the evidence of the third witness is being recorded. Learned APP states that out of total 59 witnesses, 24 witnesses are yet to be examined.

7. The Applicant is in custody since last seven years and 10 months. There is no much progress of the trial despite directions of the Apex Court and of this Court. The Applicant is languishing in jail for over seven years, though the delay is not attributable to him. Considering that the trial is going at a snails pace, it is evident that the trial is not likely to conclude within a reasonable time.

8. The Apex Court has time and again emphasized that speedy trial is an integral and essential part of the fundamental right to life and liberty enshrined in Articles 21 of the Constitution of India. It therefore follows that prolonged custody without reasonable expeditious trial is violative of Article 21 of the Constitution of India. Hence, the Applicant is entitled for bail.

9. Under the circumstances, the application is allowed on the following terms and conditions:-

- (i) The Applicant, who is facing trial in Session Case No.260 of 2016 pending on the file of learned Additional Sessions Judge, 58th Court, Fast Track Sessions Court of Seweree, Mumbai, is ordered to be released on bail on executing PR bonds in the sum of Rs.40,000/- with one or two sureties to the like amount;
- (ii) The Applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.
- (iii) The Applicant shall not interfere with the witnesses or tamper with the evidence in any manner.

- (iv) The Applicant shall keep the Trial Court informed of his current address and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.

10. The application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)