

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3858 OF 2022**

Naresh Harischandra Mali ... Applicant
versus
The State of Maharashtra,
at the instance of Revdanda Police Station ... Respondent

Ms. Mayuri D. Hatle with Mr. Mandar Surve for Applicant.
Mr. P.H.Gaikwad, APP for State.
Mr. Prashant Raut, for Org. Complainant.

CORAM : N.J.JAMADAR, J.

DATE : 27 JULY 2023

P.C. :

1. The Applicant has preferred this second bail application to enlarge him on bail.
2. The Applicant, along-with eight co-accused, has been arraigned in C.R.No.48 of 2018 registered with Revdanda Police Station for the offences punishable under Sections 302, 307, 324. 323, 143, 147, 148, 149 of Indian Penal Code, 1860 read with Section 37(1) (3) of the Maharashtra Police Act, 1951, for having committed murder of Prakash Gaikar, deceased, attempted to commit murder of Umesh Patil, the first informant, and Dharma Gaikar, injured and hurt to other injured in prosecution of the common object of the unlawful assembly.
3. The gravamen of indictment against the Applicant and the co-accused is that on 7 June 2018 the applicant had initially assaulted the first information by means

of a wooden log and when he and his maternal uncle Prakash Gaikar, deceased, grand father Dharma Gaikar, injured, and others went to question the accused, the applicant gave a blow by means of wooden log on the head of the deceased. The Applicant also assaulted the first informant and injured Dharma Gaikar. When the deceased and the injured were being shifted to the hospital by Vasant Bhure, the Applicant and the co-accused pulled Vasant Bhure out of the car and assaulted him as well.

4. The Applicant had preferred Criminal Bail Application No.540 of 2020. By an order dated 30 October 2021 this Court had rejected the Bail Application as specific role has been attributed to the Applicant. In the intervening period, the Applicant again preferred an application for bail before the learned Sessions Judge and the same came to be rejected. Hence, this second bail application.

5. I have heard Ms. Hatle, learned Counsel for the Applicant, Mr. P.H.Gaikwad, APP for the State and Mr. Prashant Raut, learned Counsel for the first informant at some length.

6. Ms. Hatle, learned Counsel for the Applicant, submitted that even if the prosecution case is taken at par, it cannot be said that the assault attributed to the Applicant was pre-mediated. In any event, there was no intention to kill the deceased. In fact, it was the informant party who had charged upon the Applicant. Secondly, Ms. Hatle would urge that the prolonged period of incarceration of more than five years without even a charge having been framed, renders further detention of the

Applicant as an under-trial prisoner, is wholly unwarranted. Rest of the accused are on bail. The prosecution proposes to examine 36 witnesses. It is very unlikely that the trial can be commenced and completed in near future. Therefore, the prolonged period of incarceration, without the prospect of trial, in itself, furnishes a ground for bail.

7. To lend support to this submission, Ms. Hatle placed reliance on the orders of the Supreme Court in the cases of Neeraj V/s. The State of Uttar Pradesh¹, Chintan Vidyasagar Upadhyay V/s. The State of Maharashtra² Indrani Pratim Mukerjea V/s. CBI and Anr.³, and the orders of this Court in Rushikesh Ramdas Patil V/s. The State of Maharashtra⁴ and Rohit Dinesh Salekar V/s. The State of Maharashtra⁵

8. In opposition to this, Mr. Gaikwad, learned APP submitted that there is no change in the circumstances since the rejection of the first bail application by this Court. Since this Court has rejected the bail application on merits, there is no justifiable ground to again entertain the application for bail. Secondly, on the aspect of the delay in the commencement of the trial, banking upon the Roznama of the sessions case, the learned APP would submit that the delay is primarily attributable to the dilatory tactics adopted by the Applicant and the co-accused. The Applicant preferred

1 Spl. Leave to Appeal (Cri.) No.11450 of 2022 dt. 16 Jan. 2023

2 Spl. Leave to Appeal (Cri.) No.2543 of 2021 dt. 17 Sept. 2021

3 Spl. Leave to Appeal (Cri.) No.1627 of 2022 dt. 18 May 2022

4 Cri. B.A. 742 of 2023 dt. 28 June 2023

5 Cri. B.A. 1295 of 2022 dt. 28 Feb. 2023

bail application and sought time to advance submissions. The Co-accused filed discharge applications and did not prosecute those applications diligently. Resultantly, the learned Judge could not frame charge, though the prosecution has tendered draft charge. The learned APP submitted that as all the discharge applications have now been decided, this Court may direct the Sessions Court to expeditiously conclude the trial within a stipulated period.

9. On the merits of the matter, it would suffice to note that in the order dated 30 October 2021 in the earlier bail application which was passed after considering the charge-sheet and the documents annexed therewith, I had recorded reasons which weighed with this Court in declining to exercise the discretion in favour of the Applicant. Thus, on merits of the matter, I do not find any justifiable reason to take a different view of the matter.

10. On the aspect of the long period of detention of the Applicant as an under-trial prisoner, the submission on behalf of the Applicant deserves consideration. In the decisions and orders referred to above, on which reliance has been placed by Ms. Hatle, in the facts of the respective cases where the trial had either not commenced or having commenced it was unlikely to conclude in a reasonable time, and the period already spent by the accused therein as an under-trial prisoner, the Supreme Court and this Court exercised the discretion in favour of the accused.

11. It is trite a prolonged period of incarceration as an under-trial prisoner

without the prospect of the trial being completed brings in the element of infringement of the fundamental right to life and liberty. If the trials are not concluded expeditiously, the procedure which deprives the personal liberty for an inordinate period is then put to the test of fairness and reasonableness, envisaged by Article 21 of the Constitution of India. Where the period of incarceration awaiting adjudication of guilt becomes unduly long, the right to life and the protection of fair and reasonable procedure, envisaged by Article 21, are jeopardized.

12. The Courts are often called upon to balance the gravity of the accusation and the period of incarceration suffered as an under-trial prisoner. Even in cases where there are statutory restrictions in the matter of grant of bail, the Courts have balanced the competing claims of interest of society and the rights of the accused.

13. The observations of the Supreme Court in the case of **Union of India V/s. K.A.Najeeb**⁶ are instructive and, hence, extracted below :

“15. This Court has clarified in numerous judgments that the liberty guaranteed by 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. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) V/s. Union of India⁷ it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential

6 (2021) 3 SCC 713

7 (1994) 6 SCC 731

criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.

17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of UAPA per-se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statute as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

18. 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 appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected."

14. In the case of Ashim @ Asim Kumar Haranath Bhattacharya @

Aseem Kumar Bhattacharya V/s. National Investigation Agency⁸ following the aforesaid pronouncement, the Supreme Court enunciated the position as under :

“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.”

15. In the affidavit in Reply on behalf of the prosecution, an endeavour is made to demonstrate that the investigating agency had filed the charge-sheet on 31 August 2018 and, thereafter, the matter was adjourned from time to time at the instance of the accused, who preferred applications for discharge and that there were other reasons for not framing the charge. The learned APP submitted that the Applicant himself had filed an application for bail and on 25 July 2022 had sought an adjournment to advance submissions in the said bail application. The learned APP submitted that since the Applicant and the co-accused were responsible for delay in

8 (2002) 1 SCC 695

commencement of trial, the Applicant cannot be permitted to urge long period of incarceration as a ground for bail.

16. The material on record, especially the Roznama in Sessions case No.104 of 2018, indicates that the discharge applications preferred by the co-accused, awaited adjudication for long. However, the fact remains that the Applicant has been in custody as an under-trial prisoner for more than five years. The trial is yet to commence. The prosecution proposes to examine 36 witnesses. The submission on behalf of the prosecution that the prosecution would now make an endeavour to expeditiously conduct the trial is required to be appreciated in the light of the extremely tardy progress in the trial since the date of the filing of the charge-sheet. The Court cannot lose sight of the fact that rest all the accused are released on bail. The endeavour of the prosecution to expeditiously conduct the trial would hinge upon the co-operation of rest of the accused.

17. The aforesaid situation, in my view, is required to be considered in the light of the fact that the deceased has suffered a single external injury i.e. large Hematoma over left cheek extending from the lateral border of left orbit to border of mandible. In the circumstances, especially in the light of the fact that the Applicant has been in custody for more than five years and the charge has yet not been framed, I am inclined to exercise the discretion in favour of the Applicant.

18. Hence, the following order :

ORDER

- (i) The Application stands allowed.
- (ii) The Applicant be released on bail in connection with C.R.No.C.R.No.48 of 2018 registered with Revdanda Police Station for the offences punishable under Sections 302, 307, 324. 323, 143, 147, 148, 149 of Indian Penal Code, 1860 read with Section 37(1) (3) of the Maharashtra Police Act, 1951, on furnishing a PR bond of Rs.25,000/- and one or two sureties in the like amount to the satisfaction of the learned Sessions Court.
- (iii) The Applicant shall attend Revdanda Police Station on the 1st Saturday of every month in between 10.00 a.m. to 11.00 a.m. to mark his presence only, for a period of one year from the date of his release.
- (iv) The Applicant shall not tamper with the prosecution evidence or give threat or inducement to or contact the first informant, witness/es or any other person concerned with the prosecution.
- (v) The Applicant shall not enter the limits of Village Talavali, Post Sudkoli, Tal. Alibag, Raigad, for a period of six months from the date of his release.
- (vi) The Applicant shall co-operate in the conduct of the trial and attend the proceedings in the Sessions case regularly.
- (vii) The Applicant shall inform his place of residence and contact details during the said period of six months immediately after being released on bail

and also keep Investigating Officer informed about the subsequent change in address and contact details.

(viii) In the event of two consecutive defaults either in attending the police station or in appearing before the trial court or breach of any of the aforesaid conditions, the prosecution will be at liberty to apply for cancellation of bail.

(ix) The Application stands disposed.

(N.J.JAMADAR, J.)