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

BAIL APPLICATION NO.3722 OF 2023

VIJAY @ VIJAYA KHEMU RATHOD	..APPLICANT
VS.	
THE STATE OF MAHARASHTRA	..RESPONDENT

Adv. Balwant Salunkhe for the applicant.
Ms. Veera Shinde, APP for the State.
PSI Ashish Pawar, Narpoli Police Station, Bhiwandi.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 18, 2023

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP for the State.
- 2.** This is an application for bail in respect of the offence punishable under Sections 302, 307, 324, 452 read with 34 of the Indian Penal Code (hereafter 'IPC' for short) and under Sections 37(1), 135 of Maharashtra Police Act registered on 13.03.2017 vide C.R. No.I-104 of 2017 with Narpoli, Bhiwandi Police Station.
- 3.** There are in all four accused. The applicant is the accused No.1. The applicant was arrested on 13.03.2017 and is now in custody for more than six years and nine

months. I am informed that though the charge has been framed and the trial has commenced, only one witness has been examined on 25.04.2023. Thereafter, there has been no progress in the trial. I am further informed that the case is now transferred to the newly established Bhiwandi Court. In such circumstances the trial is likely to take a long time to conclude. This Court has enlarged one of the co-accused Sagar Harilal Rathod on bail by an order dated 19.12.2022 in Criminal Bail Application No.3006 of 2022. For ease of reference the relevant portion of the order is reproduced which reads thus :-

"2. The case of the prosecution is that, on 12th March, 2017 informant Rajkumar, his brothers and others had slept in their room. At about 11.30 p.m. they heard noise. So they all got up and came out of their room. They noticed that Sagar, Vijay, Aakash and Avinath were found playing cards in front of the house of Dineshkumar. There was quarrel. At about 11.45 p.m. deceased Rajan went out for answering nature's call. Accused knocked the door. They broke open the door and entered into the house. Vijay Rathod assaulted Rajkumar Shilpakar by means of knife on his neck and hands. Aakash had assaulted Rajkumar by wooden stick, whereas Applicant/accused Sagar had assaulted Rajkumar by iron bar. Accused Avinash assaulted Shivkumar, Raju, Rampratap and Sureshkumar by wooden stick. Meanwhile, Rajan Shilpakar was returning back to room. At that time, accused Vijay had stabbed him on his chest, back and waist by knife. Aakash, Sagar and Avinash assaulted him by means of iron bar and wooden stick. Injured were referred to Civil Hospital, Thane. Rajan Shilpakar succumbed to injuries.

3. The previous application for bail preferred by Applicant viz. Criminal Bail Application No.1733 of 2018 is rejected by this Court vide Order dated 25th January, 2019. However, the trial was expedited with direction to conclude the same within a period of nine months from the date of receipt of Order. Liberty was granted to the Applicant to prefer fresh application for bail in the event, the trial is not concluded within a period of nine months.

4. Vide Order dated 25th November 2022, the trial Court was requested to forward report about the status of trial. In compliance with the aforesaid Order, the learned Special Judge has forwarded the report dated 8th December, 2022. The report indicates that, the case was transferred to the said Court on 31st March, 2022 from another Court. The case was posted for evidence but no witness remained present and adduced evidence. No steps were taken by the prosecution to procure presence of witnesses and the matter was adjourned on 2nd May 2022 and 9th May 2022. However, on those dates, no steps were taken. The matter was then listed on 6th June, 2022 at the instance of learned APP, summons were issued to the informant and the case was adjourned on 6th July, 2022. On the day, the advocate representing the accused No.1 and 2 were absent. Apart from that, summons could not be served upon witness and the case was again posted for steps. Subsequently, the case was adjourned on 5th August, 2022 and 12th September, 2022, the advocate for the accused was not present on both days. The charge was framed on 18th September, 2019 and the matter was posted for evidence from time to time but no evidence could be recorded.

8. It is not in dispute that, the Applicant is in jail from 13th March, 2017. He is in custody for a period about five years and nine months. The report submitted by trial Court indicates that, the charge was framed on 18th September, 2019. Trial could not proceed. The witnesses were not procured. On 2 to 3 occasions, the Advocate for accused were absent. It is pertinent to note that, although charge was framed in 2019, the witnesses could not be examined. The report forwarded by Trial Court indicates the situation from March 2022. The role attributed to the Applicant is that, the Applicant alongwith co-accused assaulted the deceased."

4. It is thus seen though the trial has been expedited the trial could not be concluded within the time stipulated by this Court.

5. Learned APP submitted that the main assailant is the applicant. There is recovery at the instance of the applicant and there is an eye witness to the incident.

6. There are no criminal antecedents reported against the applicant. Considering the long incarceration of the applicant coupled with the fact that the applicant is not responsible for protracting the trial, I am inclined to enlarge the applicant on bail. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicant-Vijay @ Vijaya Khemu Rathod in connection with C.R. No.I-104 of 2017 registered with Narpoli, Bhiwandi Police Station shall be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or more sureties in the like amount.

(c) The applicant is permitted to furnish cash bail surety in the sum of Rs.25,000/- for a period of 6 weeks in lieu of surety.

(d) The applicant shall attend the Investigating Officer of Narpoli, Bhiwandi Police Station once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m.

(e) The applicant 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 applicant shall not tamper with evidence.

(f) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(g) Except for attending the trial and for the purpose of reporting to the Investigating Officer, the applicant shall not enter Thane District after being released on bail, till the trial concludes.

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

7. The application is disposed of.

(M. S. KARNIK, J.)