

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 124 OF 2024
WITH
CRIMINAL APPLICATION NO. 779 OF 2024
IN BA/124/2024

Dnyaneshwar @ Bhaiyya S/o Shivaji Gaikwad

VERSUS

The State Of Maharashtra

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Advocate for Applicant : Mr. Shermale K. N.

APP for Respondent/State : Mrs. M.L. Sangit

Advocate for Assist to P.P. : Mr. Nitin S. Salunke h/f Mr. R.N. Dhakane

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CORAM : S.G. MEHARE, J.

DATED : APRIL 30, 2024

PER COURT:-

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for the complainant.
2. This is a successive bail application of the applicant for bail in Crime No.63 of 2021 registered with Shirur Police Station, Beed for the offences punishable under Sections 302, 364, 365, 397, 120-B, 201 r/w 34 of the Indian Penal Code.
3. Learned counsel for the applicant submits that the co-accused Ketan who has played the identical role has been granted bail. Therefore, the applicant deserves parity. Then he read the memorandum statement of co-accused Ketan Lomate and the present applicant and argued that only on the basis of the statement under Section 27 of the Indian Evidence Act, the accused has been

implicated in the crime. Except the memorandum statement, there is no evidence. He read the transcript of the CCTV footage prepared by the police. Referring this CCTV footage transcript, he would submit that the statement of co-accused Ketan contradicts the statement of the applicant. He also argued that co-accused Ketan was also seen riding the motorbike. Therefore, his role is identical. By reading the memorandum statement of co-accused Ketan, he argued that the body was exhumed at his instance. Again referring to page no.161, he would submit that it is not the statement of the independent witnesses but the statement of the accused, which is not admissible in evidence. He submits that this Court by order dated 19.07.2022 directed the learned Sessions Court to decide the matter within eight months. However, there is no material progress in the trial. Therefore, the applicant deserve bail for delay in trial. To support his contention, he relied on the order of the Hon'ble Apex Court passed in case of Sajid Vs. State of U.P. in Petition(s) for Special Leave to Appeal (Crl.) No(s). 7203/2023 dated 31.07.2023. Relying on this order, he again prayed to allow the application.

4. Per contra, learned APP and learned counsel for the complainant strongly opposed the application. Learned APP would submit that the applicant is the main culprit. He has antecedents to his discredit. She also referred to the transcript of the CCTV footage and vehemently argued that the accused is the main culprit and he

was noticed coming from the shop where the deceased was murdered. The applicant owns that Gents parlour where the murder was committed. From time to time, the accused was seen in the CCTV footage. The role of Ketan is not identical to him. She also argued that there is no change in circumstances. The trial has been delayed at the instance of the accused.

5. Learned counsel for the complainant has produced the certified copies of the order sheet/roznamas of the trial. He argued that on many occasions, the complainant was present and at some occasion the witnesses were present. However, the trial has been protracted for engaging different lawyers. The trial has been protracted at the instance of the accused and not the prosecution. Hence, he cannot take the advantage. He again produced the order of the co-ordinate bench in the case of co-accused Dhiraj Anil Mandkar who has identical role and submits that the time to complete the trial has been extended by six months. Both of them prayed to dismiss the application.

6. In fact, there is no need to consider the material again as the entire charge sheet was considered while considering first bail application of the applicant. However for the satisfaction of the counsel for the applicant, who had sought many dates to argue the matter, he was allowed to refer the papers from charge sheet. A strong evidence against the applicant is CCTV footage. The murder

has been committed in his shop. He was captured in the CCTV footage. Learned counsel for the complainant submits that the applicant even was seen carrying the dead body with co-accused Dhiraj. The transcript panchnama is the process of playing the CCTV footage and recording it in writing, what is noticed in the CCTV footage. The said panchnama was drawn in the presence of the panchas. What are the statements the accused made identifying himself, would not make transcript defective. The copy of the transcript has already been provided to the accused. The accused has also the evidence of extra judicial confession asking a friend to bring the spade to dig a ditch to bury the deceased. The overall role attributed to the applicant shows that he was playing the active role. No doubt, electronic evidence has its weightage. It is admissible in evidence. The inconsistencies in the statement of the co-accused cannot be considered at this juncture.

7. So far as the delay in trial is concerned, the roznamas reveal that the accused were time and again filing an application to change the lawyer. Co-accused Kiran succeeded in protracting the trial till he get the bail from this Court. He had changed many lawyers. The accused were applying for supplying the CCTV footage which was already supplied to them. Reading the roznamas, it cannot be said that the prosecution has not protracted the trial. The roznamas further shows that on many dates, the complainant was

present but the accused were not allowing the prosecution to open the case. The Court issued the witness summons on 23.08.2022. Since then, the accused succeeded in protracting the trial. The law did not protect the wrong doers. Since the trial is not concluded within the given time, it is not a universal law to grant the bail to the accused is a matter of right. No one should play with the law. The person who is seeking equity must do equity. The Hon'ble Supreme Court in the case of Sajid has barely observed about non-completion of the trial while granting bail on parity. Therefore, it would not help the applicant.

8. The roznama is another important evidence in this case reflecting that the accused were not cooperating with the Court and prosecution to conclude the trial in given time. Therefore, it would be unjustifiable to blame the prosecution for not completing the trial within time. That apart, the co-ordinate bench has already extended further time to conclude the trial. It is now in the hands of the accused to get the trial disposed of within time. In most of the criminal trials, the accused have focus only on bail and not on the trial. The roznamas show that the complainant was present on many dates. His pains must have been considered by the Court and the accused being only behind bar, the case should not be seen from the angle that he is unnecessarily languishing in jail. It is the accused if

he would support the prosecution, the trial could be concluded within time.

9. This Court did not find any change in circumstances, the role attributed to the applicant is not identical to the co-accused Kiran, who has been granted bail. The prosecution did not protract the trial deliberately. Hence, the application stands dismissed.

10. Criminal Application No.779 of 2024 stands disposed of.

(S.G. MEHARE, J.)