



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

929 BAIL APPLICATION NO. 2144 OF 2023

WITH

CRIMINAL APPLICATION NO. 105 OF 2024

IN BA/2144/2023

NILESH ISHWAR GURCHAL

VERSUS

THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Rohit P. Patwardhan h/f

Mr. Jadhav Satej S.

APP for Respondent-State : Mr. A. S. Shinde.

Advocate for Informant to Assist APP : Mr. Patil Chandrakant P.

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CORAM : S. G. MEHARE, J.

DATE : 07.08.2024

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and learned counsel for the informant.

2. The applicant seeks bail in Crime No.118 of 2020, registered with Muktainagar Police Station, District Jalgaon, for the offences punishable under Sections 302, 120-B and 201 of the IPC read with Section 4/25 of the Arms Act.

3. The applicant seeks bail on the ground of delay in trial and not ensuring the fundamental right to speedy trial. The

applicant has been arrested in 2020. The case was committed to the Sessions Court in 2021. After the committal, the charge was framed on 27.04.2023. After framing the charge, it appears from the roznamas placed on record by the accused that no active steps were taken to produce the witnesses. The dates were adjourned only on the ground that accused were not produced from jail. Time and again, this Court has observed that in such a situation, the Court may ask the accused to appear through V. C. and record the findings if the accused is not co-operating. This also has not been happened in this case. There is absolutely no progress or chances of the speedy trial.

4. The learned APP submits that the report may be called from the Trial Court to ascertain who is responsible. The ordersheet/roznama placed on record is sufficient to assess the reasons for delay.

5. The learned counsel for the complainant submits that the applicant has brutally murdered the deceased. He has antecedents to his discredit. Hence, he may not be granted bail.

6. The applicant is not seeking bail on merit. His earlier bail applications were rejected. He is seeking bail on no

progress and hopes of speedy trial. Considering the roznamas placed on record, there appears substance in his submission. Recently, the Hon'ble Supreme Court in case of *Javed Gulam Nabi Shaikh Vs. State of Maharashtra and others* ; *MANU/SC/0609/2024, dated 03.07.2024* has observed that no procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21. Further, the Hon'ble Supreme Court observed that the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution, then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime

committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

7. The order-sheet is the mirror of the business of the trial. It does not reflect that the prosecution ever attempted to proceed ahead with the matter. The prosecution was even not serious producing the applicant/accused before the Court for further statement. After a long time on committal of the matter, the charge was framed. This Court reiterate again that filing a miscellaneous application does not change the effective stage of the trial. The bail application or other miscellaneous application may be entertained even after framing the charge. There is no law that once the charge is framed the right to seek bail or other interim relief are automatically seized. However, unfortunately, the adjournments are given mechanically on the miscellaneous ground that the accused has not been produced from jail. In this case, the learned counsel for the complainant was attending the trial of each date. The roznama does not reflect any sincere attempt to open the trial and ensure the speedy trial to the applicant. Though the offence is serious, the Hon'ble Supreme Court has observed that Article 21 of the Constitution applies irrespective of the nature of the crime. Considering the snail's speed of the trial, it could be difficult to

believe that the trial would be decided speedily or within a reasonable time. The applicant is incarcerated in the jail for last four years without any material progress in the trial. Hence, in view of the ratio laid down by the Hon'ble Supreme Court in the case of Javed (supra), the applicant deserves bail. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant **Nilesh Ishwar Gurchal** be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of like amount, on the following conditions :
 - (a) The applicant should not tamper with the prosecution witnesses.
 - (b) He should attend the trial on each and every date.
 - (c) He should not threat the witnesses.
 - (d) He applicant should furnish his residential proof with cell phone number with the Trial Court with an undertaking that he will not change it till the trial is concluded.

- (e) He should not involve in similar crime.
 - (f) He should not enter Taluka Muktainagar till the conclusion of the trial.
- (iii) Criminal application No.105 of 2024 stands disposed of.

(S. G. MEHARE, J.)

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vmk/-