

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

CRIMINAL BAIL APPLICATION NO. 504 OF 2024

Praveen Ashok Babar

...Applicant

Vs.

The State of Maharashtra

...Respondent

Mr. Aniket Nikam i/b Amit Ichan, for the applicant.

Mr. P. H. Gaikwad, APP for State-Respondent.

CORAM:- ANIL S. KILOR, J.

DATED:- 23rd AUGUST, 2024

PC:-

1) Heard.

2) By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No. 124 of 2019, registered with Vishrambag Police Station, Sangli for the offences punishable under Sections 302, 307, 120-B, 143, 147, 148, 149, 323, 504 and 506 of the Indian Penal Code, 1860, sections 4/25 and 27 of the Arms Act, 1959, Sections 3(1)(i)(ii), 3(2) and 3(4) of Maharashtra Control of Organized Crime Act, 1999 and Section 135 of the Maharashtra Police Act, 1951.

3) The applicant is in jail from last 64 months and as far as the trial is concerned, the charge is not framed till date. There are 74 witnesses and the Roznama of the Sessions Court shows that from last 18 months, on most of the dates, the matter was adjourned for the reason that the accused were not produced. Therefore, the delay cannot be attributed to the accused including the applicant.

4) As far as the merit is concerned if the statement of eye-witnesses are considered, it is alleged that at least six accused persons at the same time assaulted with knife, the deceased. However, only one stab injury was found on the person of the deceased. There is no evidence to show that who is the author of the said stab injury. The death was caused due to stab injury to the chest.

5) One co-accused has been released on bail by this Court who caught hold the deceased when the six co-accused including the applicant allegedly inflicted blows by knife on the deceased.

6) No doubt that the provisions of MCOC Act, 1999 has been invoked.

7) In the cases of *Mohammad Muslim @ Hussain Vs. State (NCT of Delhi)*¹ has observed thus:

“.....19. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is “not guilty of such offence” and that he is not likely to commit any offence while on bail. What is meant by “not guilty” when all the evidence is not before the court? It can only be a 18 As per the counter-affidavit dated 21.02.2023 filed by the respondent-state before this court. prima facie determination. That places the

1 2023 SCC OnLine 352

court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws – be balanced against the public interest.

24....There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal"²² (also see Donald Clemmer's 'The Prison Community' 20 National Crime Records Bureau, Prison Statistics in India https://ncrb.gov.in/sites/default/files/PSI-2021/Executive_ncrb_Summary-2021.pdf 21 1993 Cri LJ 3242 22 Working Papers - Group on Prisons & Borstals - 1966 U.K. published in 194023). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.

8) The Hon'ble Supreme Court of India in the case of *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh*)², has observed thus:

“23. This Bench in a recent decision dated 03.07.2024 in Javed Gulam Nabi Shaikh Vs. State of Maharashtra, Criminal Appeal No. 2787 of 2024, has held that howsoever serious a crime may be, an accused has the right to speedy trial under the Constitution of India. That was also a case where fake counterfeit Indian currency notes were seized from the accused-appellant. He was investigated by the National Investigating Agency (NIA) under the National Investigating Agency Act, 2008 and was charged under the UAP Act alongwith Sections 489B and 489C IPC. He was in custody as an undertrial prisoner for more than four years. The trial court had not even framed the charges. It was in that context, this Court observed as under:

9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

23.1. After referring to various other decisions, this Court further observed as follows:

19. If 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.

20. We may hasten to add that the petitioner is still an accused; not a convict. The overarching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.

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26. Angela Harish Sontakke Vs. State of Maharashtra is a case where the accused-appellant was charged under various provisions of the UAP Act as well as under the IPC. He sought for bail. This Court observed that, undoubtedly, the charges are serious but the seriousness of the charges will have to be balanced with certain other facts like the period of custody suffered and the likely period within which the trial can be expected to be completed. In that case, it was found that the appellant-accused was in custody since April, 2011 i.e. for over five years. The trial was yet to commence. A large number of witnesses were proposed to be examined. It was in that context that the appellant-accused was directed to be released on bail.

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30.1. Thereafter, this Court held as follows:

7.1. We are dealing with a case of the accused whose guilt is yet to be established. So long as he is not held guilty, the presumption of innocence is applicable. He cannot be deprived of all his rights guaranteed under Article 21.....

9) Thus considering the above referred observations and considering the fact that till date the charge is not framed and the applicant is in jail from last more than five years and further there is no end of trial in sight, I am of the opinion that the applicant is entitled for grant of bail, Though the learned APP is strongly opposing the present application.

10) As far as the apprehension expressed by the learned APP that if the applicant is released on bail, there is every likelihood that the applicant may commit the similar offence, it can be addressed by imposing certain conditions. The learned Counsel for the applicant, on instructions states that the applicant is ready to abide any condition including the condition not enter into the territorial jurisdiction of Dist. Sangli. Hence, I pass the following order.

ORDER

- i. The Bail Application is allowed;
- ii. It is directed that the Applicant shall be released on bail in Crime No. 124 of 2019, registered with Vishrambag Police Station, Sangli for the offences punishable under Sections 302, 307, 120-B, 143, 147, 148, 149, 323, 504 and 506 of the Indian Penal Code, 1860, sections 4/25 and 27 of the Arms Act, 1959, Sections 3(1)(i)(ii), 3(2) and 3(4) of Maharashtra Control of Organized Crime Act, 1999 and Section 135 of the Maharashtra

Police Act, 1951, on furnishing P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand) with one solvent surety in the like amount;

iii The applicant shall not enter into the territorial jurisdiction of Dist. Sangali till the conclusion of the trial except on the date of trial;

iv. The applicant shall provide his address and name of the nearby police station to the I.O, which he shall attend the said Police Station on 1st day of every month between 12.00 noon to 2.00 p.m., till the conclusion of the trial except on the date of trial;

v. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;

vi. Liberty is granted to the State to apply cancellation of bail if the applicant commits similar offence.;

vii. The Applicant shall attend the trial before the Trial Court regularly on every date unless exempted by the Trial Court for any reason.

viii. Application stands disposed of, accordingly.

[ANIL S. KILOR, J.]