

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3284 OF 2024

Digambar Uddhav Supekar ...Applicant

Versus

The State of Maharashtra & Anr. ...Respondents

Mr. Kunal N. Pednekar a/w Mr. Shubham S. Nabriya i/b Shailesh Chavan, for the Applicant.

Mr. Y. M. Nakhwa, APP, for the Respondent No.1 - State.

Ms. Reena Prajapati, for Respondent No.2.

Mr. Dipak Suryakant Gurav, Police Hawaldar, Satara City Police Station, District – Satara, present.

CORAM: MADHAV J. JAMDAR, J.

DATED: 16 OCTOBER 2024

P.C.:

1. Heard Mr. Pednekar, learned Counsel for the Applicant, Mr. Nakhwa, learned APP for the Respondent No.1 – State and Ms. Prajapati, learned Counsel appointed to represent the interest of the Respondent No.2.

2. This is the second Bail Application. The first Bail Application i.e. Bail Application No.213 of 2024 has been allowed to be withdrawn by this Court by Order dated 30th January 2024 by granting liberty to the Applicant to file the second Bail Application after a period of 6 months in case there is no substantial progress in the trial.

3. In this Bail Application preferred under Section 439 of the *Code*

of Criminal Procedure, 1973 (“CrPC”), the relevant details are as follows:-

1	C.R. No.	963 of 2020
2	Date of registration of F.I.R.	12/12/2020
3	Name of Police Station	Satara City, District - Satara
4	Section/s invoked	376 & 323 of the <i>I.P.C., 1860</i> ; 4, 6 & 12 of the <i>POCSO Act, 2012</i> .
5	Date of incident	12/12/2020
6	Date of arrest	12/12/2020
7	Date of filing Charge-sheet	07/02/2021

4. Mr. Pednekar, learned Counsel for the Applicant states that the Applicant is incarcerated since 12th December 2020 i.e. for a period of 3 years and 10 months. He states that the Charge-sheet has been filed on 7th February 2021 and the Charge was framed on 22nd August 2022 and till date there is no progress in the trial except the examination of one witness i.e. *panch* witness. He states that when the Applicant was arrested his age was about 20 years. He submitted that the father of the Applicant passed away when the Applicant was in custody and there is no other person to take care of his mother.

5. On the other hand, Mr. Nakhwa, learned APP and Ms. Prajapati, learned Counsel appointed to represent the interest of the Respondent No.2 submitted that the material on record shows that the Applicant is involved in a very serious offence. Both of them pointed out the F.I.R., statement of the victim recorded under Section 164 of the CrPC, the

medical report as well as the other material on record.

6. Ms. Prajapati, learned Counsel appointed to represent the interest of the Respondent No.2 relied on the decision of the Supreme Court in ***Shivani Tyagi v. State of U.P.***¹ and more particularly on Paragraph No.5 of the same. The Said Paragraph No.5 reads as under:-

“5. In the decision in Anwari Begum v. Sher Mohammad this Court in paragraphs 7 and 8 held thus:—

“7. Even on a cursory perusal the High Court's order shows complete non-application of mind. Though a detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the Court while passing orders on bail applications, yet a Court dealing with the bail application should be satisfied as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The Court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.

8. There is a need to indicate in the order reasons for prima facie concluding why bail was being granted, particularly where an accused was charged of having committed a serious offence. It is necessary for the Courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are:

- 1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;***
- 2. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant;***
- 3. Prima facie satisfaction of the Court in support of the charge.***

Any order de hors of such reasons suffers from non-

1 2024 SCC OnLine SC 842

application of mind as was noted by this Court in *Ram Govind Upadhyay v. Sudarshan Singh* (2002) 3 SCC 598, *Puran v. Rambilas* (2001) 6 SCC 338 and in *Kalyan Chandra Sarkar v. Rajesh Ranjan* (2004) 7 SCC 528.”

7. Perusal of statement of the victim recorded under Section 164 of the CrPC and the other material on record shows that the Applicant is involved in a very serious offence. Thus, no case is made out for grant of bail on merits.

8. However, it is required to be noted that this is a case where the Applicant is incarcerated since 12th December 2020, the Charge-sheet has been filed on 7th February 2021 and the Charge was framed on 22nd August 2022. Till date there is no progress in the trial except the examination of one *panch* witness. As per the Charge-sheet, there are more than 15 witnesses proposed to be examined by the prosecution. Accordingly, the trial will take a considerably long time to conclude.

9. Speedy trial is one of the facets of right to life and liberty guaranteed under Article 21 of the Constitution of India. Speedy trial is an essential ingredient of “reasonable, fair and just” procedure guaranteed by Article 21 and it is the constitutional obligation of the State to devise such a procedure as would ensure speedy trial to the Accused.²

10. The Supreme Court in the case of *Javed Gulam Nabi Shaikh v.*

² Hussainara Khatoon (IV) v. Home Secy., State of Bihar, (1980) 1 SCC 98

*State of Maharashtra*³ in Paragraph Nos.18 to 21 has held as follows:-

“18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

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 over-arching 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.”

(Emphasis supplied)

11. The above observations of the Supreme Court are applicable to

³ 2024 SCC OnLine SC 1693

the present case. The Applicant is incarcerated since 12th December 2020 and still there is no possibility of the conclusion of trial in reasonable time. The Applicant is a young person of 24 years and when the offence took place he was of 20 years. Therefore, the Applicant is entitled for bail on the ground of long incarceration.

12. Although the Applicant is entitled to be released on bail on the ground of long incarceration, stringent conditions are required to be imposed.

13. Mr. Pednekar, learned Counsel for the Applicant states that the Applicant is a resident of Village - Thatewadgaon, Taluka – Shevgaon, District – Ahmednagar and he will report to the Shevgaon Police Station, District – Ahmednagar. He states that as the victim is from District – Beed, the Applicant will not enter District – Beed.

14. The Applicant does not have any criminal antecedents.

15. The Applicant does not appear to be at risk of flight.

16. Accordingly, the Applicant can be enlarged on bail by imposing conditions.

17. In view thereof, the following order:-

ORDER

- (a) The Applicant - Digambar Uddhav Supekar be released on bail in connection with C.R. No.963 of 2020 registered with the Satara City Police Station, District – Satara on his furnishing PR. Bond of Rs.15,000/- with one or two local sureties in the

like amount.

- (b) The Applicant shall not enter the Beed district after being released on bail.
- (c) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (d) The Applicant shall report to the Shevgaon Police Station, District – Ahmednagar once in a week i.e. on every Sunday between 10.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Shevgaon Police Station, District – Ahmednagar to communicate details thereof to the Investigating Officer.
- (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 such a person from disclosing the facts to the Court or to any Police personnel.
- (f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.
- (h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

18. The Bail Application is disposed of accordingly.

19. It is clarified that the Trial Court shall decide the case on its merits, uninfluenced by the *prima facie* observations made in this Order.

20. This Court places on record the appreciation for the assistance rendered by Ms. Reena Prajapati, learned Counsel appointed to represent the interest of the Respondent No.2. Her name be included in the Panel of Advocates of the High Court Legal Services Committee, Mumbai and professional charges be paid to her as per rules.

[MADHAV J. JAMDAR, J.]