IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.4841 OF 2024

SONALI MILIND PATIL

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Date: 2024.12.04 14:31:50 +0530

Rakesh @ Saurabh Sadashiv Waghmare …Applicant

Versus

The State of Maharashtra …Respondent

Mr. Satyavrat Joshi a/w. Ms. Reena Prajapati, i/b. Mr. Yash Fadtare, Advocates, for the Applicant.
Ms. Poonam P. Bhosale, APP, for the Respondent-State.

CORAM: MADHAV J. JAMDAR, J.
DATED : 4th DECEMBER 2024

PC:-

1. Heard Mr. Satyavrat Joshi a/w. Ms. Reena Prajapati, learned Counsel appearing for the Applicant and Ms. Bhosale, learned APP appearing for the Respondent-State.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1.	C. R. No.	661/2022
2.	Date of registration of F.I.R.	29/09/2022
3.	Name of Police Station	Sangli City Police Station,

		Sangli
4.	Section/s invoked	302, 504, 506, 201, 212 r/w. 34 of the Indian Penal Code, 1860.
5.	Date of incident	28/09/2022
6.	Date of arrest	29/09/2022
7.	C. R. No.	661/2022

3. There are six accused persons, out of six 4 have been granted bail. The present Application is filed by the Accused No.2. The present Applicant has filed Bail Application before the learned Additional Sessions Judge, Sangli bearing Exhibit-40 in Sessions Case No.18 of 2023. The said Bail Application is rejected by order dated 8th November 2024. In paragraph No.5 of the said order, the prosecution case is set out, which reads as under:

> "*5. Perusal of available record prima facie revealed that on 28.09.2022 present accused along with two other accused namely Sujit and Sufiyan, were searching deceased Ajit @ Ajju. They asked some of the witnesses to make mobile call to Ajit to know his location. After accused got information about the place, where Ajit was present, all three accused went there on the motorcycle which was not having number plate. Then they assaulted Ajit by knives and there are eye witnesses to said incident. Ajit died before he could be treated in the hospital. There is recovery of incriminating articles at the instance of accused after their arrest. Thus, prima facie there is sufficient material on record to show*

> *involvement of present accused commission of serious crime of murder of deceased Ajit. Even otherwise learned advocate for the accused made submission that the dis not seeking bail on merits but only on the ground of parity.*"

4. Learned Counsel appearing for the Applicant submitted that there are total six accused and out of these six accused, three accused persons have been released on bail by the learned Sessions Court and Accused No.3-Sofiyan Firoz Bagwan is released on bail by this Court by order dated 7th October 2024 passed in Criminal Bail Application No.3139 of 2024. He submitted that as per the prosecution case, Accused No.1-Sujit Rajaram Shinde, Accused No.2-Saurabh Sadashiv Vaghmare i.e. the present Applicant and Accused No.3-Sofiyan Firoj Bagwan have actually participated in the incident in question. He submitted that the motive has been attributed to the Accused No.1-Sujit Rajaram Shinde as the deceased was harassing the cousin sister of the Accused No.1-Sujit and therefore, the incident in question had occurred. He submitted that the Applicant is young man aged 20 years and he is incarcerated since 29th September 2022. He submitted that there is no progress in the trial and even the charge is also not framed yet. He submitted that as per the prosecution case, there are total 68

witnesses proposed to be examined by the prosecution. He submitted that there are no criminal antecedents against the Applicant. Therefore, he prayed that the Applicant be released on bail.

5. On the other hand, Ms. Bhosale, learned APP appearing for the Respondent-State strongly opposed the Bail Application. She pointed out the panchnama regarding C.C.T.V footage and submitted that the Applicant is seen along with the Accused No.1 and Accused No.3 travelling on the motorcycle. She also pointed out the statement of eye-witnesses and more particularly statements of 5 witnesses, who have identified the Applicant in the Test Identification Parade. She also pointed out the Post Mortem Report and submitted that there are three stab injuries on the body of the deceased. She submitted that there is recovery of knife at the instance of present Applicant. Therefore, she submitted that the Bail Application be rejected.

6. Perusal of the record shows that *prima facie* the Applicant is involved in the offence in question and therefore not entitled to be released on bail on merits.

7. However, perusal of the record also shows that the Applicant has been arrested on 29th September 2022. The Applicant is incarcerated for more than two years and two months. Till date there is no progress in the trial, except framing of the charge. As per the prosecution case, there are total 68 witnesses proposed to be examined by the prosecution. The Applicant is young man aged 20 years. Even as per the prosecution case as found during the investigation the motive was that the deceased was harassing the cousin sister of Accused No.1-Sujit.

8. Mr. Joshi, learned Counsel appearing for the Applicant has relied on the decision of the Supreme Court in case of **Javed Gulam Nabi Shaikh vs. State of Maharashtra & Anr.**[1] He relied on paragraph Nos.8 to 11 and paragraph Nos.18 to 20 of the said decision of the Supreme Court. The said paragraphs are produced herein below for ready reference:

> "**8.** *Having regard to the aforesaid, we wonder by what period of time, the trial will ultimately conclude.* ***Howsoever serious a crime may be, an accused has a right to speedy trial as enshrined under the Constitution of India.***

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1 2024 SCC OnLine SC 1693

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.*

10. *In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in Gudikanti Narasimhulu v. Public Prosecutor, High Court reported in (1978) 1 SCC 240. We quote:*

> *"What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox]:*
>
> *"I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that* ***bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial.****"*

11. *The same principle has been reiterated by this Court in Gurbaksh Singh Sibba v. State of Punjab, (1980) 2 SCC 565 that* ***the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment.****"*

> "*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.*"
>
> (Emphasis supplied)

9. As noted earlier the Applicant has been arrested on 29th September 2022. The Applicant is incarcerated for almost more than two years. Till date there is no progress in the trial, except

framing of the charge. As per the prosecution case, there are total 68 witnesses proposed to be examined by the prosecution. This is a case where there is no likelihood of completion of the trial within a reasonable period. The observations of the Supreme Court in ***Javed Gulam Nabi Shaikh*** (supra) are squarely applicable to the present case.

10. There are no criminal antecedents against the present Applicant.

11. There is some apprehension expressed by Ms. Bhosale learned APP that the Applicant may try to influence the witnesses. In view of said apprehension, Mr. Joshi, learned Counsel appearing for the Applicant states that as several witnesses are residing in the same locality as that of the Applicant, the Applicant will therefore not reside within District - Sangli and that the Applicant will reside at C/o. Mr. Manoj Sunil Kurane (Cousin Brother), Happy Spot Vachnalaya, Jaysingpur, Taluka-Shirol, District-Kolhapur.

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

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

14. In view thereof, the following order:-

ORDER

(a) The Applicant- Rakesh @ Saurabh Sadashiv Waghmare be released on bail in connection with C.R. No.661 of 2022 registered with the Sangli City Police Station, District - Sangli on his furnishing P.R. Bond of Rs.50,000/- with one or two local solvent sureties in the like amount.

(b) The Applicant shall not enter District - Sangli after being released on bail, except for reporting to the Investigating Officer, if called, and for attending the trial.

(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 Jaysingpur Police Station, District-Kolhapur once every week, on every Sunday between 11:00 a.m. and 1:00 p.m. till the conclusion of the trial. The Police Inspector of Jaysingpur Police Station, District-Kolhapur 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.

15. The Bail Application is disposed of accordingly.

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

[MADHAV J. JAMDAR, J.]