

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

CRIMINAL BAIL APPLICATION NO. 131 OF 2023

Sainath Shankar Wadkar

... Applicant

Versus

The State of Maharashtra

... Respondent

Mr. Amin Solkar a/w Ms. Lavanya Salve and Mr. Junaid Thange
for the Applicant

Ms. P. P. Shinde, A.P.P for the Respondent-State

***CORAM : REVATI MOHITE DERE, J.
FRIDAY, 19th JANUARY 2024***

P.C :

1 This is the second bail application preferred by the applicant, seeking his enlargement on bail in connection with C.R. No. 307/2018 registered with the Ichalkaranji Police Station, for the alleged offences punishable under Sections 397, 396, 395, 302, 307, 120B, 504 and 506 of the Indian Penal Code; Sections 4 and 25 of the Arms Act and Sections 37(1) and 135 of the Maharashtra Police Act. The first bail application of the applicant i.e. Criminal Bail Application No. 998/2020 was dismissed as

withdrawn on 11th October 2021, as the Court (Coram : Revati Mohite Dere, J.) was not inclined to enlarge the applicant on bail. However, whilst dismissing the first bail application as withdrawn, the trial of the applicant was expedited. The trial Court was directed to conclude the case, as expeditiously as possible and preferably within 12 months from the date of receipt of this order.

2 Despite the aforesaid direction, it is informed that the trial did not commence and accordingly, the learned Judge sought two extensions, which were granted by this Court vide orders dated 13th December 2022 and 28th June 2022 i.e. of 6 months and 1 year respectively. Though there was a direction to expedite the trial and time was extended from time to time, the trial is still not complete. It appears that the charge in the said case was framed only on 4th September 2023. It is not in dispute that till date, not a single witness has been examined in the said case.

3 Learned counsel for the applicant submits that if the prosecution case is seen and the statement of the complainant recorded under Section 164 is perused, no overt act has been attributed to the applicant, who is the father of co-accused-Suraj. He submits that the applicant has admittedly not assaulted the deceased-Hemant. He further submits that not a single case is registered as against the applicant till date and that the applicant is languishing in jail for around 6 years.

4 Learned A.P.P opposes the bail application. She, however, does not dispute that the trial of the applicant has not commenced.

5 It appears that the incident in question had taken place on 11th December 2018. After the Court proceedings, when the parties were returning home, it is alleged by the complainant that suddenly, 6 to 7 persons came and assaulted the complainant's son-Hemant on his head with a steel rod, that

Sushil @ Bajya assaulted his son with a *koyta*, pursuant to which, his son fell down. He further states that when the said persons were assaulting his son, he tried to protect his son, pursuant to which, he was also assaulted. Although in the 161 statement, the complainant has stated that the applicant threw a stone on Hemant's back, in his 164 statement, the complainant has not attributed the said act to the applicant. In the 164 statement, the complainant has stated that the applicant was instigating the persons to kill Hemant and was standing near a lavatory. There is some discrepancy with respect to the role attributed to the applicant. The applicant is in custody for 6 years and the trial has not commenced till date. Learned counsel for the applicant, on instructions, submits that the applicant will attend the trial Court on every date and will not delay the trial on any count, more particularly, due to his non-absence or non absence of the advocate. Statement accepted.

6 At this stage, learned A.P.P states that the applicant be directed not to enter the jurisdiction of Ichalkaranji Police

Station, till the conclusion of the trial, except for the purpose of attending the trial. Learned counsel for the applicant states that he has no objection, if such a condition is imposed.

7 Considering the role attributed to the applicant and the discrepancy in the statement recorded by the police under Sections 161 and 164, and the fact that the applicant has no antecedents and that he is in custody for about 6 years, and also having regard to the fact that the applicant has undertaken to attend the trial Court on every date, the application is allowed on the following terms :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 50,000/- with one or more sureties in the like amount;

- (ii) The applicant shall not enter the jurisdiction of Ichalkaranji Police Station, except for the purpose of attending the trial Court;

(iii) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter;

(iv) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

(v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(vi) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vii) If the applicant fails to appear before the trial Court, or there is breach of any of the aforesaid conditions, the

prosecution shall be at liberty to seek cancellation of the applicant's bail.

8 The application is allowed in the aforesaid terms and is accordingly disposed of.

9 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

10 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.