

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

CRIMINAL BAIL APPLICATION NO. 227 OF 2024

Shivshankar Sastanand Sharma

..Applicant

Versus

The State of Maharashtra

..Respondent

Mr. Shailesh Kharat a/w. Nagesh Khedkar a/w. Prithviraj
Deshmukh for Applicant.

Smt. M. H. Mhatre, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 01 FEBRUARY 2024

PC. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 112 of 2018 registered at Hadapsar Police Station, Pune, on 28.01.2018, under sections 302, 212, 120B, 143, 144, 147, 148 and 149 of the Indian Penal Code, under section 4, 25 of the Arms Act and under section 7 of the Criminal Law Amendment Act.

2. Heard Mr. Shailesh Kharat, learned counsel for the applicant and Smt. Mhatre, learned APP for the State.

3. The Applicant was arrested on 10.02.2018 and since

then he is in custody. The trial has commenced, but only two witnesses are examined so far. The date of incident in which one Sujit Verma was brutally assaulted is 28.01.2018. The applicant had earlier preferred Criminal Bail Application No.1679 of 2020. It was withdrawn unconditionally as recorded in the order dated 16.06.2021. After that, the applicant again preferred Criminal Bail Application No.2008 of 2023. On that occasion, this Court, vide the order dated 31.08.2023 had directed the trial to be concluded within four months from 31.08.2023. A specific liberty was granted to the applicant to make a fresh application for bail if the trial was not concluded within that period. The period of four months is already over and yet the trial is not concluded. As of today, only two witnesses are examined. Therefore, the applicant has filed the present application pursuant to the specific liberty granted to him. Considering this situation, today I am entertaining his application and I have heard the learned counsel for the applicant on merits again.

4. Before proceeding further, it must be noted that, it is a sad state of affairs. The applicant is in custody for about 6 years

now. Vide the previous order dated 31.08.2023 this Court had specifically directed the Trial Court to conduct the trial on day to day basis and conclude it within four months. However, as of today, only two witnesses are examined. The investigating agency is not taking sufficient efforts to produce the witnesses before the trial Court. It is high time that the investigating agency is held accountable for not co-operating in disposal of the case within a stipulated time. The offence in this case is serious. The assault was brutal. The deceased had suffered 52 injuries. Therefore, it was all the more important for the investigating agency to have taken special efforts to produce the witnesses before the Trial Court. This incident itself had created terror in the area affecting law and order situation. In spite of that, as of today, the Trial is not even progressed at a reasonable stage. Having said this, considering that the applicant is in custody for almost 6 years, I have proceeded to hear the learned counsel for the applicant, as well as, learned APP.

5. As mentioned earlier, the offence pertains to murder of one Sujit Verma. The motive for committing this murder was that the accused's group and their organization wanted to establish

their supremacy in the area. The prosecution case is that, pursuant to a pre-planned conspiracy, the accused Pravin Sutar, Kiran Gundewad, Akshay Suryawanshi, Akshay Hake and Prithviraj Suryawanshi assaulted the deceased with sickle and sharp heavy weapons. The incident was caught in the CCTV footage. They were identified by the P.S.I. The allegations against the applicant are that, he helped the murderer assailants to escape from the spot and he stayed with them while they were absconding. Therefore, he was part of the conspiracy; though, there are no specific allegations against him of committing actual assault on the deceased.

6. Learned counsel for the applicant submitted that, taking into account the fact that the applicant was not the actual assailant, his case can be separated from that against the other assailants. The applicant is already in custody for six years. There is a scope to infer that the applicant was not aware of the plan to commit murder of Sujit. But only after the incident he had helped the accused in escaping from the spot. He referred to certain statements which point out his role in the incident.

7. Learned APP opposed these submissions on merits. She submitted that, from the fact that, immediately after the incident the applicant had carried the main assailants away from the spot; shows that, he was aware of the plan to commit murder of Sujit. The offence is serious and, therefore, bail should not be granted to the applicant. However, she could not justify the inefficiency shown by the investigating agency in producing the witnesses before the Trial Court.

8. Considering both these submissions, I am giving due importance to the liberty granted to the applicant to file this application; since the Trial did not conclude within the stipulated period set by this Court by the previous order.

9. I have already mentioned that, it was a brutal offence and the deceased was cruelly assaulted causing 52 incised wounds. The statement of P.S.I. Ghuge specifically mentions that the CCTV footage showed that the aforementioned main accused were assaulting the deceased. There is no allegation that the applicant had taken part in the assault. However, there is an incriminating

statement given by one Shreyas Shewale. He was near the spot at the time of incident. Shortly after the incident had taken place, he had seen the applicant driving a two wheeler. The main assailants Pravin Sutar and Akshay Hake were sitting on his two wheeler. The other assailant Prithvi Suryawanshi had taken this witness's two wheeler for going to the spot before committing the assault. Therefore, this witness's statement is important and clearly implicates the present applicant. This was the reason why the applicant's previous bail applications were not entertained. The applicant's brother had produced the two wheeler which was used by the applicant in carrying the actual assailants away from the spot.

10. There is a panchanama of the CCTV footage of the lodge where the accused had stayed together. It is the prosecution case that the applicant had accompanied the actual assailants when they stayed in a particular lodge. Thus, at this stage, there is some definite incriminating material against the present applicant. But, I am showing some leniency in this bail application because the trial is not likely to conclude soon and also because the

applicant has not taken part in the actual assault. The applicant is already in custody for about 6 years today. Therefore, considering these factors only, I am inclined to grant bail to the present applicant.

11. Hence, the following order :

ORDER

- i) In connection with C.R.No. 112 of 2018 registered at Hadapsar Police Station, Pune, the applicant is directed to be released on bail on his executing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii) The Application is disposed of.

(SARANG V. KOTWAL, J.)