

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

BAIL APPLICATION NO.421 OF 2024

Gulfam Zahir Hasan

.Applicant

Versus

The State of Maharashtra

.Respondent

Mr. Pranay Saraf a/w. Mr. Diptendu Bose, Advocate, for the Applicant.

Mr. P. H. Gaikwad, APP, for the Respondent – State.

Mr. Chandrakant G. Javalgi, PSI-Warje Malwadi Police Station, Pune City, present.

CORAM: MADHAV J. JAMDAR, J.

DATE: 03.04.2024

P. C.

1. Heard Mr. Saraf, learned Counsel for the Applicant and Mr. Gaikwad, learned APP 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.	214 of 2018
2. Date of registration of F.I.R.	06.07.2018
3. Name of Police Station	Warje Malwadi, Pune
4. Sections invoked	394, 397 r/w. 34 of I.P.C., 1860.
5. Date of incident	24.06.2018
6. Date of arrest	13.11.2018
7. Date of filing of Charge-sheet	08.07.2019

3. Mr. Saraf, learned Counsel for the Applicant submitted that in this particular case, the Applicant's fundamental right of speedy trial

has been violated. He submitted that the Applicant is incarcerated since 13.11.2018 and there is no progress in the trial till date and even the Charge is also not framed yet. He further submitted that Sections 394 and 397 of the *Indian penal Code, 1860* could not have been invoked or applied since neither was anyone physically hurt nor was any deadly weapon used in the commission of the alleged offence. He submitted that the Applicant has already undergone incarceration of about 5 years and 6 months. He also pointed out that there are about six antecedents against the Applicant. However, he submitted that insofar as all these case are concerned, he has been granted bail in all these cases. He, therefore, submitted that the Bail Application be granted.

4. On the other hand, Mr. Gaikwad, learned APP for the Respondent-State vehemently opposed the Bail Application. He submitted that the trial could not be concluded as the Applicant and other co-Accused had not engaged an Advocate and the Applicant and other co-Accused are responsible for the delay in the trial. As far as merits are concerned, Mr. Gaikwad, learned APP for the Respondent-State submitted that in fact, a pistol was used in the offence in question. There is recovery of a Hyundai car and the Applicant has been identified in the Test Identification Parade. He therefore submitted that the Bail Application be rejected.

5. The prosecution case, as summarised in the Order dated 20.11.2023 passed by the learned Additional Sessions Judge, Pune

below Exh. 10 in Sessions Case No.450 of 2023 is reproduced herein below for ready reference:

“3. Prosecution case in short is that informant Sudhir Jalnapure, a resident of Kolhapur, was going to Mumbai on 24.06.2018. He came to Pune by boarding in a bus from Kolhapur. On 24.06.2018 at about 6.45 p. m. he was waiting at Chandani Chowk, Pune for a vehicle to go to Mumbai. At that time, a white colour car stopped near him, four persons including its driver, were travelling therein. They made inquiry with him. The informant told that he want to go to Mumbai, and they took him in the car. Thereafter, on the way, one of the persons kept pistol on his head and tied clothe on his eyes. They have forcibly taken away his Credit Card and obtained its password from him. They have forcibly taken away his mobile and gold ring from his finger. They assaulted him. Then they took out the clothe from his eyes, returned his mobile and left him near Mankhurd railway station on the highway at about 11.50 a. m. Then by auto rickshaw, he visited Mankhurd Police Station and police therefrom took him to Trombay police station, where he lodged report giving description of those four people who committed crime against him in the car. On verification of his e-mail account, he came to know that transactions of Rs. 3,68,960/- were effected at Kalamboli, Koparkhairane, Vashi etc. by using his Credit Card. The crime is committed within jurisdiction of Warje Malwadi Police Station. Therefore, his report is forwarded to said police station, crime is registered and further investigation is started.

4. The accused were arrested in Crime No. 115/2018 registered at Kalamboli Police Station, Navi Mumbai for the offence under section 392 r/w sec 34 of the Indian Penal Code and under section 3(1)(ii), 3(2), 3(4) of MCOC Act. Then custody of accused were transferred in this crime and some recovery is effected. On completion of investigation, charge-sheet is submitted.”

6. A perusal of the record shows that the F.I.R. was lodged on 06.07.2018. The Applicant was apprehended on 13.11.2018. Charge-sheet was filed on 08.07.2019. There are total four accsued in the

offence. All the Accused are in custody. The Applicant is behind bars for more than 5 years and 10 months. Admittedly, as far as the progress in trial is concerned, even Charge is also not framed yet. As per the Charge-sheet, the prosecution intends to examine 22 witnesses. Thus, there is a clear violation of Applicant's fundamental right of speedy trial. Although, it is the contention of Mr. Gaikwad, learned APP for the Respondent-State that the Accused are not co-operating for conducting the trial in a time-bound manner, there is nothing on record to substantiate the said contention. In fact, all the Accused are behind bars. It is the duty of the State to take effective steps to conclude the trial. Thus, it is clear that the trial is inordinately delayed.

7. 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.¹ Therefore, the Applicant is entitled for bail.

8. It is the contention of Mr. Gaikwad, learned APP for the Respondent-State that in one of the cases against the Applicant, the provisions of the *Maharashtra Control of Organised Crime Act, 1999* have been invoked. However, learned Counsel for the Applicant submitted that the Applicant has been granted bail in that case. In

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

any case, the factual position on record shows that the Applicant's fundamental right to speedy trial is violated.

9. The trial is likely to take a considerably long time.
10. The Applicant does not appear to be at risk of flight.
11. Accordingly, the Applicant can be enlarged on bail by imposing conditions.
12. In view thereof, the following order:-

ORDER

(a) The Applicant - Gulfam Zahir Hasan be released on bail in connection with C.R. No.214 of 2018 registered with the Warje Malwadi Police Station, District-Pune on his furnishing PR. Bond of Rs.25,000/- with one or two local solvent sureties in the like amount.

(b) 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.

(c) The Applicant shall report to the Warje Malwadi Police Station, District-Pune on every Sunday between 11.00 a.m. and 1.00 p.m. until the conclusion of the trial.

(d) 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.

(e) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.

(f) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.

(g) The Applicant shall surrender his passport, if any, to the Investigating Officer.

13. The Bail Application is disposed of accordingly.

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

[MADHAV J. JAMDAR, J.]