

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

CRIMINAL BAIL APPLICATION NO.468 OF 2024

Waseem Maqbool Khan

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Meghdoot Oak, Advocate, for the Applicant.

Ms. Veera Shinde, APP, for Respondent-State.

Mr. R.R. Londhe, PSI-Sanjay Nagar Police Station, Sangli, present.

CORAM: MADHAV J. JAMDAR, J.

DATED: 2nd May 2024

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1. Heard Mr. Oak, learned Counsel for the Applicant and Ms. Shinde, 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.	116 of 2015
2.	Date of registration of F.I.R.	10 th November 2015
3.	Name of Police Station	Sanjaynagar, District-Sangli
4.	Sections invoked	302, 364, 364(A), 118, 212 r/w 120(B) of <i>I.P.C., 1860</i> ; 3, 25 r/w 4, 25 of the <i>Arms Act, 1959</i> 3(1)(ii), 3(2), 3(3) and 3(4), 3(5) of the <i>MCOCA Act, 1989</i> .
5.	Date of incident	10 th November 2015
6.	Date of arrest	2 nd December 2015
7.	Date of filing Charge-sheet	3 rd May 2016

3. In this Bail Application, Affidavit-in-Reply dated 6th April 2023 of Annasaheb Jadhav, Sub-Divisional Police Officer, Sangli has been filed. The prosecution case as set out in the said Affidavit is reproduced herein below for ready reference:

“That the Orig. complainant/Informant herein lodged complaint on 10.11.2015 at Sanjay Nagar Police Station, Sangli inter alia stating therein that her husband namely Gorakhnath is having one Pan Shop near Lovely Circle and he used to go to his pan shop at about 10.00 a.m. and used to come back at 4.00 p.m.. It is the case of the Orig. Complainant/ Informant that the neighbourer of the complainant Mohammad Nadaf had demanded Rs.2 lacs ransom from Gorakhnath and had given threats to him. As such, the complaint came to be lodged with Sanjaynagar Police Station and police protection had been given to Gorakhnath.

According to the complainant, on 9.11.2015, her husband left the house at 11.00 p.m. after dinner but did not come back. Thereafter, one Vishal Mane came to the house of the complainant and told that slippers of Garakhnath are lying near Joshi school. As such, the complainant and her brother-in-law Vishal went there and saw the slipper chappal of the deceased. Since the husband of the complainant did not return in that night, the complaint came to be lodged against the Accused persons and others with Sanjay Nagar Police Station on 10.11.2015.”

4. It is the contention of Mr. Oak, learned Counsel for the Applicant that the Applicant is seeking bail mainly on the ground of prolonged incarceration and that the Accused who is attributed with the main role and even the gang leader has been released on bail and therefore, the Applicant is seeking bail on the ground of parity. It is his submission

that the Applicant was arrested on 2nd December 2015 and there is no progress in the trial till date except for framing of the Charge on 13th March 2019. He submitted that there are total 20 Accused and out of them 17 have been released on bail. He submitted that the gang leader, Mohammed Jamal Nadaf has also been released on bail. He submitted that the allegation against him is that he provided a country made pistol to the gang leader, Momammed for facilitating the commission of the offence. He therefore submitted that the Applicant is entitled to be released on bail.

5. On the other hand, Ms. Shinde, learned APP vehemently opposed the Bail Application and submitted that the country made pistol was supplied by the present Applicant to the gang leader for commission of the offence and therefore the main role is attributed to the present Appliant. She further pointed out the contents in the Affidavit-in-Reply to the effect that the gang leader, Mohammed was granted bail on medical ground on 11th October 2023 passed in Bail Application No.650 of 2023 and after availing bail, he committed another offence i.e. C.R. No. 0174 of 2023 registered with Banhatti Police Station, Bagalkot, Karnataka. She therefore submitted that the Bail Application be rejected.

6. Perusal of record shows that in the present case, the Applicant was arrested on 2nd December 2015 and till date there is no progress in

the trial except for framing of Charge on 13th March 2019. As per the Charge-sheet the prosecution proposes to examine a total of 140 witnesses. The Applicant is incarcerated since more than almost 8 years.

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

8. Thus, this is a case where there is a violation of fundamental right to speedy trial. The Supreme Court in the case of *Union of India v. K.A. Najeeb*² has held that if the Accused person’s right to speedy trial is affected in violation of Article 21 of the Constitution of India, then statutory restrictions on bail such as the twin-conditions as contemplated under Section 21(4) of the MOOC Act will not apply.

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

10. However, as there are 4 antecedents, stringent conditions are required to be imposed.

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

12. In view thereof, the following order:

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

2 (2021) 3 SCC 713

ORDER

(a) The Applicant – Waseem Maqbool Khan be released on bail in connection with C.R. No.116 of 2015 registered with the Sanjaynagar Police Station, Sangli, District-Sangli on his furnishing PR. Bond of Rs.1,00,000/- 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 Sanjaynagar Police Station, Sangli, District - Sangli once a week i.e. on Sunday of 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 prosecution 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 Trial Court shall decide the case on its merits, uninfluenced by the observations made in this Order.

[MADHAV J. JAMDAR, J.]