

Arjun

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

BAIL APPLICATION NO.774 OF 2024

Mohammad Qasim Mukim Ahemad ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Aniket Vagal a/w Divesh Mehani, Kunal N. Pednekar & Ms. Savvy Kolhekar, for the Applicant.

Mr. Prasanna Malshe, APP, for the Respondent-State.

CORAM : MADHAV J. JAMDAR, J.

DATED : FEBRUARY 26, 2024

P.C.:

1. Heard Mr. Vagal, learned Counsel appearing for the Applicant and Mr. Malshe, 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.	138 of 2018
2	Date of registration of F.I.R.	28/12/2018
3	Name of Police Station	Pawarwadi Police Station, Malegaon, District-Nashik
4	Section/s invoked	302, 363, 201 & 506 r/w 34 of the <i>Indian Penal Code, 1860</i>
5	Date of incident	27/12/2018-28/12/2018
6	Date of arrest	28/12/2018
7	Date of filing Charge-sheet	08/03/2018

3. As per the prosecution case, as the family members of the wife of the Applicant were not allowing her to cohabit with the Applicant as he was not earning anything and he was not behaving properly with wife, therefore, the Applicant threatened the family members of his wife that if they refused to allow his wife to cohabit with him, he would take an extreme step. As per the prosecution case in furtherance of said threat the Applicant took away the cousin of his wife and killed him.

4. Learned Counsel appearing for the Applicant submitted that the case is of circumstantial evidence. The Applicant was arrested on 28th December 2018 and till date there is no progress in the trial. He submitted that the charge was framed on 12th May 2023 and thereafter there is no further progress in the trial. He therefore submitted that there will be considerable delay in concluding the trial. He submitted that there are no antecedents against the present Applicant and therefore the Applicant be released on bail.

5. On the other hand, Mr. Malshe, learned APP strongly opposed the Bail Application. He submitted that there is C.C.T.V. footage, showing that the Applicant and the deceased were traveling together on a motorcycle. He submitted that there is recovery of body of the deceased at the instance of the Applicant. He submitted that although the case is of circumstantial evidence,

the circumstances are very strong and therefore the Bail Application be rejected.

6. A perusal of the record shows that the incident in question had taken place on the intervening night of 27th December 2018 and 28th December 2018. F.I.R. has been lodged on 28th December 2018 and the Applicant was arrested on 28th December 2018. It is an admitted position that investigation has been completed and Charge-sheet has been filed on 8th March 2018. The charge has been framed on 15th May 2023. As per the Charge-sheet, there are a total of 23 witnesses proposed to be examined by the prosecution. Therefore, it is clear that the trial will take a considerably long time. The Applicant is incarcerated since 5 years and 2 months. There is no further progress in the trial.

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. Mr. Vagal, learned Counsel appearing for the Applicant

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

states that as several witnesses are from Taluka-Malegaon, District-Nashik, the Applicant will therefore not reside within Taluka-Malegaon, District-Nashik and that the Applicant will reside at C/o. Md. Ahmed Mukumuddin, Survey No.132, Plot No.-A, House No.40, Juna Talav, Bhiwandi.

9. The Applicant does not have any criminal antecedents.

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

11. Accordingly, the Applicant can be enlarged on bail by imposing conditions. In view thereof, the following order:-

ORDER

- (a) The Applicant-Mohammad Qasim Mukim Ahemad be released on bail in connection with C.R. No.138 of 2018 registered with the Pawarwadi Police Station, Malegaon, District-Nashik on his furnishing P.R. Bond of Rs.25,000/- with one or two solvent sureties in the like amount.
- (b) The Applicant shall not enter the Taluka-Malegaon, District-Nashik 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 Bhiwandi City Police Station, District-Thane once in 15 days i.e. on 1st and 3rd Sunday of every month between 11.00 a.m. and 1.00

p.m. till the conclusion of the trial. The Police Inspector of Bhiwandi City Police Station, District-Thane 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.

12. The Bail Application is disposed of accordingly.

13. It is clarified that the observations made herein are *prima facie* and the trial Court shall decide the case on its own merits and uninfluenced by the observations made in this Order.

[MADHAV J. JAMDAR, J.]