

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 965 OF 2024

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Omkar @ Gabbar Amarnath Yadav ...Applicant
Versus
State of Maharashtra ...Respondent

Ms. Ankita Aher Sawant, for the Applicant.
Mr. Tanveer Khan, APP for the State.
PSI Abhay Kadam, Sanpada Police Station, Navi Mumbai,
present.

CORAM: N. J. JAMADAR, J.
DATED: 7th MARCH, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. This is an application for bail in Sessions Case No.321 of 2023 (original SC No.107/2014) arising out of CR No.196 of 2013 registered with Turbhe Police Station, Navi Mumbai, for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860 ("the Penal Code") and Section 7 read with Section 27 of the Arms Act, 1959 and Section 37(1) read with Section 135 of the Maharashtra Police Act, 1951.
3. Mahendrakumar (the deceased) was the brother of the first informant. On 27th November, 2013 the deceased and his friends including Omkar @ Gabbar, the applicant, had

drinks at the house of Nainesh Sheth at Nerul. There was a quarrel between the applicant and the deceased. The applicant had allegedly threatened to cause harm to the deceased when they returned to Sanpada. On the very night, at about 10.30 pm, while the deceased and his friend Shankar Suresh Rathod, were sleeping on the footpath in front of Plot No.184, Sector 5, Sanpada, the applicant came thereat and raked up quarrel with the deceased. The latter was in an intoxicated state and did not wake up. Thereupon the applicant allegedly took out a scythe from the nearby sugarcane juice stall and gave blows on the head of the deceased. Eventually the deceased succumbed to the injuries.

4. The applicant came to be arrested on 28th November, 2013. Since then the applicant has been in custody. The learned Counsel for the applicant submitted that more than 10 years period has been elapsed and only five witnesses have till date been examined. Sessions Case No.321 of 2023 (original SC No.107/2014) has now been transferred to the Court of Additional Sessions Judge, Belapur. It is unlikely that the trial can be concluded within a reasonable period.

Thus, having regard to the long period of incarceration the applicant be enlarged on bail.

5. The learned APP resisted the prayer for bail. It was submitted that there are eye witnesses to the alleged occurrence. The weapon of offence has been recovered pursuant to the discovery made by the applicant under Section 27 of the Evidence Act. Since the trial has already commenced, at this stage, the applicant does not deserve to be released on bail.

6. I have perused the material on record. There is indeed *prima facie* evidence which incriminates the applicant. However, the fact that the applicant has been in custody for more than 10 years cannot be lost sight of. During a decade long period, only five witnesses have till date been examined. Considering the pace of the proceedings before the Court of Session it is extremely unlikely that the trial can be concluded within a reasonable period.

7. It is well recognized that a long period of incarceration without a real prospect of the expeditious conclusion of trial impinges the right to life and personal liberty guaranteed under Article 21 of the Constitution of India. In the case at hand, the period of incarceration exceeds a decade. In the

circumstances, further detention of the applicant would be wholly unjustifiable and would impinge his right to life and personal liberty.

8. For the foregoing reasons, I am inclined to exercise the discretion in favour of the applicant.

9. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in Sessions Case No.321 of 2023 (original SC No.107/20213) arising out of CR No.196 of 2013 registered with Turbhe Police Station, on furnishing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.
- (iii) The applicant shall mark his presence at Turbhe and Sanpada Police Station on the first Monday of every alternate month between 10.00 am. to 1.00 pm for the period of two years or till conclusion of trial, whichever is earlier.
- (iv) The applicant shall not tamper with the prosecution evidence. 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 him from disclosing the facts to Court or any police officer.

- (v) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.
- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application stands disposed.

[N. J. JAMADAR, J.]