



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

BAIL APPLICATION NO. 41/2024

KALPESH VIJAYKUMAR MHATRE ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT
WITH
BAIL APPLICATION NO. 209/2022

SHASHIKANT GAJANAN MHATRE ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

WITH
BAIL APPLICATION NO. 331/2024

1] BAMBAM @ SHANKAR VIRENDRANARAYAN
JHA
2] SAMEER KANTILAL RAWAL ..APPLICANTS
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

WITH
BAIL APPLICATION NO. 1161/2022

UDAYBHAN @ GUDDU RAMAVADH SINGH ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

WITH
INTERIM APPLICATION NO. 993/2023
IN
BAIL APPLICATION NO. 209/2022
WITH
INTERIM APPLICATION NO. 1011/2023
IN
BAIL APPLICATION NO. 1161/2022

VAISHALI MANOJ MHATRE

..APPLICANT

VS.

THE STATE OF MAHARASHTRA
& ANR.

..RESPONDENTS

Adv. Vinod Kashid a/w Adv. Sumit Bhoite a/w Adv. Abdul
Shaikh for the Applicants.

Adv. M.K. Kocharekar i/b Adv. Saurabh Butala for the
Intervener.

Adv. D.N. Salvi (Spl. P.P.) a/w Adv. Sangeeta Shinde APP
a/w Adv. Sahil Salvi, Adv. Sagar Redkar, Adv. Narendra
Kalpoth and Adv. Vishal Kilanje for the State.

S.M. Tawade, ASI of Crime Branch.

CORAM : M. S. KARNIK, J.

DATE : APRIL 16, 2024

P.C. :

1. Heard learned counsel for the applicants, learned SPP
for the State and learned counsel for the Intervener.
2. By consent, all these bail applications are being
disposed of by a common order.
3. These are applications for bail filed by the applicants
on the ground of long incarceration. The applicants face
accusations for the offence punishable under Sections 302,
143, 146, 147, 148, 149 and 120-B Indian Penal Code;
Sections 3, 25(1B)(a), 27(2), 4 and 27 of the Indian Arms

Act; Sections 37(1) and 135 of the Maharashtra Police Act and Sections 3(1)(i), (ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 ("MCOC Act" for short) registered on 14/02/2017 vide C.R. No.61 of 2017 with Narpoli Police Station, Thane.

4. The applicants are in custody since 2017. Learned counsel submitted that the applicants are not the actual assailants. The charge against them is of criminal conspiracy to commit murder. It is pertinent to mention that this Court by an order dated 19/08/2019 in Bail Application No. 207 of 2019 in respect of the co-accused Sujit @ Tatya Madhukar Patil passed the following order which will cover the facts in the present bail applications as well. It is pertinent to note the role of the present applicants is similar to that of the co-accused Sujit. The order reads thus:

"1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. I-61 of 2017 registered with the Narpoli police Station, Thane, for the alleged offences punishable under Sections 302, 143, 146, 147, 148, 149, 120B of the Indian Penal Code; under Sections 3, 25 (1B), 27(2), 4, 17 of the Arms Act; under Sections 37(1), 135 of

the Maharashtra Police Act and under Sections 3(1) (i), 3(2), 3(4) of the Maharashtra Control of Organized Crimes Act.

3 Learned senior counsel for the applicant submitted that taking the prosecution case as it stands, at the highest, it appears that the applicant was present at the time when the conspiracy to kill Manoj Mhatre was hatched. He submitted that however, there is no material to show that thereafter, the applicant executed, participated or played any role in furtherance of the said conspiracy. He submitted that at the highest, what can be said about the applicant is that he was keeping bad company and had joined the bad company at the wrong time. Learned senior counsel relied on the Division Bench Judgment of this Court in the case of Ajay Ramchandra Kokare vs. State of Maharashtra (2009 All MR (Cri.) 862). He further submitted that the applicant has been acquitted in all the six cases registered against him and that the only case which is pending is C.R. No. 22/2017 registered with the Narpoli Police Station for the alleged offences punishable under Sections 15 and 16 of the Environment Act r/w Section 48 (7)(8) of the Revenue Rules. He further submitted that the applicant was taken into custody from the said C.R. i.e. C.R. No. 22/2017, in which, the applicant was arrested on 21st September 2017 and his custody was transferred in the present C.R. on 4th October 2017. He submitted that the applicant has neither been named in the FIR nor in the supplementary statement by the complainant. He further submitted that there is no material on record to show that the applicant participated in furtherance of the criminal conspiracy allegedly hatched on 14th February 2017 at about 2:30 p.m. and as such, cannot be saddled with the ultimate execution of the criminal conspiracy, in the absence of any material.

4 Learned A.P.P opposed the application. Learned A.P.P has filed an affidavit of Nivrutti T. Kadam, Assistant Commissioner of Police, (Detection-2), Crime Branch, Thane City. Learned A.P.P states that apart from the statement of Viddesh Sudam Patil,

there are 7 confessions/statements of other co-accused recorded under Section 18 of the MCOC Act, which clearly point to the complicity of the applicant. He submitted that the confessions of the accused show that the applicant was present when the conspiracy to kill Manoj Mhatre was hatched and that all those who were present at the conspiracy had given their approval for the same. He further submitted that the CDR records also show that the applicant was present in that area when Manoj Mhatre was killed at about 8:45 – 9:00 p.m. and that the applicant was in touch with the co-accused.

5 Perused the papers. There are confessional statements of co-accused which show that on 14th February 2017 at about 2:30 p.m, all the accused including the applicant met at Sai Raj Enterprises (owner being co-accused Viddesh Patil). The said confessional statements show that they were sitting and consuming alcohol, when Prashant Mhatre was abusing Manoj Mhatre and was holding him responsible for his defeat in the election. Prashant Mhatre is also alleged to have stated that they should kill Manoj Mhatre and for that he was ready to pay Rs. 50,00,000/- and incur all legal expenses. It appears that all the accused gave an affirmative reply to the same, pursuant to which, firing practice was done soon thereafter and at about 8:45 p.m. to 9:00 p.m., some of the co-accused executed the plan and killed Manoj Mhatre. The CDR records show that the applicant was present on the spot. Although, the applicant is not alleged to have been part of the team that ultimately executed the assault on Manoj Mhatre, prima facie, what appears from the confessional statements of co-accused is that the applicant was present when the conspiracy was hatched and that all the accused who were present at the spot including the applicant gave their approval when a call to kill Manoj Mhatre was given. The CDR record shows the presence of the applicant on the spot. The applicant was also present at the spot, soon after the firing. The execution was also done on the very same day i.e. between 8:45 p.m to 9:00 p.m. The judgment relied upon by the learned

senior counsel does not apply to the facts of the present case and is clearly distinguishable.

6 Considering the material on record, this is not a fit case to enlarge the applicant on bail. The application is accordingly rejected.

7 It is made clear that the observations made herein are prima facie, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

8 In view of the above order, the intervention application being Criminal Application No. 794 of 2019 does not survive. The same is also disposed of."

5. The co-accused Sujit challenged the aforesaid order before the Supreme Court by filing Petition for Special Leave to Appeal (Crl.) No. 3799/2020. The Supreme Court by order dated 01/09/2020 dismissed the said petition as withdrawn. The order reads thus:

" After some arguments, learned senior counsel for the petitioner seeks to withdraw the petition.

The special leave petition is accordingly dismissed as withdrawn."

6. Thereafter, co-accused Sujit approached the trial Court for bail by filing an application below Exhibit 199. By order dated 08/09/2022, the trial Court enlarged co-accused Sujit on bail. The trial Court granted bail on the ground that some materials were not brought to its notice

when the earlier bail application was decided and also on the ground of long incarceration. The application made by the victim for cancellation of bail granted to co-accused Sujit has been rejected by me today by way of a separate order.

7. Learned SPP and learned counsel for the victim were at pains to point out that the applicants can not claim parity with co-accused Sujit and Ganesh who have been enlarged on bail by the trial Court. I do find some substance in the contention of the learned SPP and learned counsel for the victim that once this Court has after considering all the materials on record, rejected the bail application on merits, the petition, against which order, was withdrawn before the Supreme Court, a view different from the view taken by this Court should not have been taken by the trial Court on merits. Parity with co-accused Sujit or Ganesh will not be a factor in favour of the applicants for their enlargement on bail.

8. Long incarceration is the only ground which I am inclined to consider. Learned SPP as well as learned counsel

for the victim were at pains to point out that long incarceration by itself cannot be a factor for grant of bail as the gravity of the offence and whether the trial is protracted at the instance of the accused has to be seen. Learned SPP, relied upon the decision of the Supreme Court in the case of **Ranjan Dwivedi Vs. C.B.I.**¹ in support of his submission. In paragraph No.19, the Supreme Court observed that "Reasons for the delay is one of the factors which courts would normally assess in determining as to whether a particular accused has been deprived of his or her right to speedy trial, including the party to whom the delay is attributable". The Supreme Court was of the opinion that "the delay in trial of the petitioners from 1991 to 2012 is solely attributable to petitioners and other accused persons". There Lordships in paragraph No.22 observed that "in the present case, the delay is occasional by exceptional circumstances. It may not be due to failure of the prosecution or by the systemic failure but we can only say that there is a good cause for the failure to complete the trial and in our view, such delay is not violative of the right

¹ MANU/SC/0657/2012

of the accused for speedy trial.”

9. Shri Salvi then invited my attention to the observations of the trial Court while rejecting the bail application in respect of the co-accused Chiranjiv @ Motu Balaram Mhatre. The trial Court in paragraph Nos. 50 to 52 of its order dated 15/12/2023 has observed thus:

“50] It is true that some of the accused are behind bars since 2017 and the trial is yet to commence. But there is sufficient material to show that the accused are prolonging the matter. Application Exh. 18 seeking bail was initially filed in the year-2017 by five accused Viddesh Patil, Rangnath Mhatre, Chiranjiv Mhatre, Sujit Mhatre and Kalpesh Mhatre. Say was filed by the prosecution in the year-2017 itself. But the learned Advocate for the accused Viddesh Patil on 30/3/2023 withdrew the application to the extent of accused Viddesh Patil by filing pursis Exh.272 and filed fresh application. Learned Advocate for the accused Chiranjiv Mhatre, Sujit Mhatre and Kalpesh Mhatre has not advanced argument from 2017 upto 2023. The arguments of these applicants were advanced in the year-2023.

51] There is involvement of 21 accused in the case. Out of them 6 accused have been granted bail. 15 accused are behind bars. The accused who have been granted bail, are not promptly attending the Court. On one occasion i.e. on 8/8/2023 N.B.W. was issued against accused Rangnath Vishnu Mhatre. Some of the accused i.e. accused Mayur Mhatre, Kunal Mhatre and Rajani Mhatre have not engaged Advocate. They are not ready to avail services from the Advocate of District Legal Services Authority. Learned Advocates of the accused who have been granted bail are not regularly attending the Court.

52] The prosecution on 5/5/2022 has already filed draft charge. Learned Special Public Prosecutor on

every occasion is insisting to frame charge, but due to non co-operative attitude of the accused, charge could not be framed. In my view, when accused themselves are responsible for causing delay of the trial, bail cannot be granted on the ground of long incarceration."

Relying on these observations, learned SPP Shri Salvi submitted that the delay is solely attributable to the applicants and, therefore, they are not entitled to be released on bail on the ground of long incarceration.

10. On the other hand, learned counsel for the applicants relied upon the order dated 16/10/2023 passed below Exhibit 300 which was the application on behalf of the victim seeking adjournment. The trial Court in paragraph Nos. 5 and 6 of the order dated 16/10/2023 passed below Exhibit 300 has observed thus:

"5] The notification dated 4/9/2023 shows that the Government of Maharashtra has appointed Special Public Prosecutor. It is nowhere mentioned in the notification that the terms are yet to be settled. It may be noted that on the same ground on previous occasion also i.e on 26/9/2023 adjournment was sought by the Advocate of victim. The prosecution is aware about the stage of the trial and the fact that 15 accused are behind bars, still prosecution has not taken effective steps for securing presence of newly appointed Special Public Prosecutor.

6] Reason is not proper, however, in the interest of justice, adjournment is granted as a last chance. Taking note of facts of the case, in the light of the

provisions of section 309 of the Code of Criminal Procedure, the prosecution should be mulcted with cost. I quantify it at Rs.500/-."

(emphasis mine)

11. It is also pertinent to note the observations of the trial Court in paragraph Nos. 3 and 4 of the order dated 06/11/2023 passed below Exhibit 306 which reads thus:

"3] As per application Special Public Prosecutor Mr. V.A. Kulkarni as on today is deputed to Sessions Court, Palghar, therefore, he will not be available till 10/11/2023. Learned advocates for the accused have strongly opposed the application. According to them, date was given considering convenience of Special Public Prosecutor Mr. V.A. Kulkarni.

4] It may be noted that accused are behind bars since 2017. There are 21 accused out of which six are on bail. 15 accused are behind bars. Record shows that the prosecution is not serious about conducting the trial."

(emphasis mine)

12. So far as the delay is concerned, I am of the opinion that the delay is not solely attributable to the accused. No doubt, there are observations of the trial Court that the accused are responsible for protracting the trial, but at the same time the trial Court also observed that the record shows the prosecution is not serious about conducting the trial. It is for the reason where personal liberty of the applicants is involved and as the applicants are in pre-trial

custody for more than 7 years, I am inclined to give the benefit of the observations of the trial Court to the applicants.

13. The observations of this Court while rejecting the bail application of co-accused Sujit are significant which reads thus:

“Although, the applicant is not alleged to have been part of the team that ultimately executed the assault on Manoj Mhatre, *prima facie*, what appears from the confessional statements of co-accused is that the applicant was present when the conspiracy was hatched and that all the accused who were present at the spot including the applicant gave their approval when a call to kill Manoj Mhatre was given”.

The applicants are similarly placed. Factually, the applicants are not the actual assailants. They were present at the spot and a part of the conspiracy.

14. Though the charge has been framed, witnesses are yet to be examined. The prosecution proposes to examine more than 125 witnesses. Learned SPP, however, submitted that the prosecution is likely to examine around 75 witnesses. Even then, the trial is unlikely to conclude any time soon. There are criminal antecedents reported against some of the applicants. In my opinion, in the facts and

circumstances of the present case, the criminal antecedents by itself should not be a factor to deprive the facility of bail to the applicants. In any case, I am inclined to impose stringent conditions while enlarging the applicants on bail which will also allay the apprehension of the victim that the applicants are likely to threaten the witnesses. Hence, the following order:-

ORDER

(a) The applications are allowed.

(b) The applicants- Kalpesh Vijaykumar Mhatre, Shashikant Gajanan Mhatre, Bambam @ Shankar Virendranarayan Jha, Sameer Kantilal Rawal and Udaybhan @ Guddu Ramavadh Singh in connection with C.R. No.61 of 2017 registered with Narpoli Police Station shall be released on bail on their furnishing P.R. Bond of Rs.1,00,000/- each with one or more local sureties each in the like amount.

(c) Except for attending the trial, the applicants shall not enter the area of Mumbai/Mumbai Suburban, Thane, Palghar and Raigad districts after being released on bail, till the trial concludes.

(d) The applicants shall attend the Police Station, nearest to the place of their residence, while residing

outside the areas of Mumbai/Mumbai Suburban, Thane, Palghar and Raigad districts, once a week, i.e. on Sunday, between 11.00 a.m. and 1.00 p.m.

(e) The applicants 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. The applicants shall not tamper with evidence.

(f) On being released on bail, the applicants shall furnish details of their contact numbers, residential addresses and the details of the Police Stations close to their residence, to the trial Court as well as to the Investigating Officer and shall keep them updated, in case there is any change.

(g) The applicants shall attend the trial regularly. The applicants shall co-operate with the trial Court and, on instructions, learned counsel for the applicants assured that they shall not seek unnecessary adjournments.

(h) If the victim applies for witness protection, learned SPP assured that the same shall be considered expeditiously.

15. The applications are disposed of.

16. At this stage, learned SPP requested for stay of this order for at least 2 weeks. I am not inclined to accede to this request. The request is rejected.

(M. S. KARNIK, J.)