

Sayali Upasani

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.- 1677 OF 2024

Ramesh Kalyan Kale and Others ... Applicants

Vs.

The State of Maharashtra ...Respondent

WITH

BAIL APPLICATION NO.- 1680 OF 2024

Sanjay Kalyan Kale ... Applicant

Vs.

The State of Maharashtra ...Respondent

**SAYALI
DEEPAK
UPASANI**

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WITH

BAIL APPLICATION NO.- 1698 OF 2024

Sanjay Kalyan Kale and Others ... Applicants

Vs.

The State of Maharashtra ...Respondent

Mr. Nitin Sejpal with Akshata Desai and Siddharth Gharat, for Applicant.

Ms. Ranjana D. Humane, APP for State/Respondent.

Mr. S. L. Doke, PSI, Borivali Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 29th APRIL, 2024.

PC:-

- 1) Heard the learned Counsel for the parties.
- 2) These applications are preferred for bail in CR No. 69 of 2016 registered with Borivali Police Station, for the offences punishable under Sections 143, 145, 147, 148, 149, 353, 332, 307, and 109 of the Indian Penal Code, 1860 ('the Penal Code') and Sections 3, 4, 25 and 27 of the Arms Act, 1959 and Section 135 read with Section 37 (1) (A) of the Maharashtra Police Act, 1951 and CR No. 68 of 2016 registered with Borivali Police Station, for the offences punishable under Sections 307, 326, 395, 397 and 459 read with Section 34 of the Indian Penal Code, 1860 and Section 135 read with Section 37 (1) (2) of the Maharashtra Police Act, 1951.
- 3) The genesis of the two crimes is in the same occurrence. The first informant in CR No. 68 of 2016 lodged a report with the allegations that on 8th February, 2016 at about 2.30 am, 7 to 8 persons committed dacoity in her house situated at Satya Sai Krupa Society and robbed them of cash amount and valuable ornaments of Rs.57,000/- and caused grievous hurt to the first informant and her husband.

4) In CR No. 69 of 2016, the first informant alleged that the police party was informed that dacoits had concealed themselves in the forest area near Shimpoli Talav, Shitaladevi Temple. The police party held combing operation, and, in response, the dacoits pelted stones at the police party and also one of them fired at the police force. Eventually those dacoits were arrested along with incriminating articles including stolen property.

5) The first set of Bail Applications preferred by the applicants, being BA Nos. 2189 of 2016 and 2365 of 2016, were rejected by an order dated 3rd February, 2017. The second set of applications, being BA Nos. 442 of 2017 and 443 of 2017, also came to be rejected on 15th June, 2017. This Court, however, directed the trial Court to make an endeavour to expedite the trial. The third set of applications, being BA Nos. 2518 of 2019, 2522 of 2019 and 1509 of 2021, were also rejected by the Court while making the trial time bound. As the trial could not be concluded within the said period, by an order dated 6th September, 2023, time to complete the trial was extended by six months. A fourth set of applications being BA Nos. 3261 of 2023, 3269 of 2023 and 3265 of 2023 were rejected by this Court, noting that this Court has already extended the time to conclude the trial.

6) The Court had requested the learned Additional Sessions Judge seized with Sessions Case No. 300 of 2016 and 301 of 2016 to make an

endeavour to assign some time on the scheduled dates to positively hear the Sessions Cases and conclude the trial within the extended period. Liberty was granted to the applicants to revive the prayer in the event trial is not completed. The Court is now informed that by an order dated 23rd April, 2024, a Co-ordinate Bench has extended time to dispose the Sessions Case Nos. 300 of 2016 and 301 of 2016 by eight months.

7) Mr. Sejpal submitted that as the trial has not been concluded despite repeated extensions, further detention of the applicants would be in violation of the right to life and personal liberty of the applicants .

8) In opposition to this, Mr. Pethe, the learned APP, submits that having regard to the nature of the accusation and the fact that 17 witnesses have already been examined and only the Investigating Officer remains, at this stage, the prayer for bail may not be considered.

9) I have perused the allegations in the FIR. So far as the charge for the offences punishable under Section 307 of the Penal Code, 1860 qua the assault on the Police Officers, prima facie, it appears that the police personnel have suffered simple injuries. In the circumstances of the case whether, in the event of conviction, the applicants would be liable for enhanced punishment on the count that the victims suffered hurt, appears to be a debatable issue. So far as the offence punishable under Section 397 of the Penal Code, 1860, the applicants have already undergone the minimum sentence of seven years prescribed in Section 397 of the Penal Code, 1860.

10) It is well recognized that a prolonged period of incarceration without a real prospect of expeditious conclusion of the trial impinges upon the right to speedy justice, which is a facet of the fundamental right to life guaranteed under Article 21 of the Constitution of India. It has been held that even in cases where there are statutory restrictions in the matter of grant of bail in addition to those prescribed under the Code of Criminal Procedure, 1973, such statutory restrictions melt down in the face of prolonged period of incarceration. (**Union of India V/s. K. A. Najeeb¹**).

11) In the case at hand, the applicants have been in custody for more than 8 years. Trial was expedited in the year 2017. Despite repeated extensions, the trial has not been completed within the extended period. In these circumstances, further detention of the applicants as under trial prisoners impinges upon their right to life and personal liberty.

12) I am, therefore, inclined to exercise discretion in favour of the applicants on the ground of prolonged period of incarceration.

13) Hence, the following order.

: O R D E R :

- (i) The applications stand allowed.
- (ii) The applicants be released on bail in CR No. 69 of 2016 registered with Borivali Police Station, for the offences

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punishable under Sections 143, 145, 147, 148, 149, 353, 332, 307, and 109 of the Indian Penal Code, 1860 and Sections 3, 4, 25 and 27 of the Arms Act, 1959 and Section 135 read with Section 37 (1) (A) of the Maharashtra Police Act, 1951 and CR No. 68 of 2016 registered with Borivali Police Station, for the offences punishable under Sections 307, 326, 395, 397 and 459 read with Section 34 of the Indian Penal Code, 1860 and Section 135 read with Section 37 (1) (2) of the Maharashtra Police Act, 1951, on furnishing a P.R. Bond in the sum of Rs.30,000/- each, with one or two sureties in the like amount, to the satisfaction of the learned trial Court.

(iii) The applicants shall mark his presence at Borivali Police Station, on the first and third Monday of every month between 10.00 am to 12.00 noon for a period of two years or till conclusion of trial, whichever is earlier.

(iv) The applicants shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

(v) The applicants shall not leave the limits of Mumbai and Mumbai Suburban district without prior permission of the trial Court til the conclusion of the trial.

(vi) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicants and the co-accused and the trial court shall not be influenced by any of the observations made hereinabove.

[N. J. JAMADAR, J.]