

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

CRIMINAL BAIL APPLICATION NO. 3579 OF 2023

Bobby Bathwel Jagdane

...Applicant

Versus

The State of Maharashtra

...Respondent

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

Mr. S.M. Mangaonkar, APP, for Respondent-State.

Mr. Deepak V. Tonde, PSI, Bhadrakali Police Station, Nashik.

CORAM : MADHAV J. JAMDAR, J.

DATED : 7th May 2024

P. C.

1. Heard Mr. Vagal, learned Counsel for the Applicant and Mr. Mangaonkar, 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.	37 of 2019
2. Date of registration of F.I.R.	16 th January 2019
3. Name of Police Station	Bhadrakali, Nashik
4. Section/s invoked	302, 143, 147, 148, 149, 120(B), 323, 504, 506, 114 of <i>I.P.C., 1860</i> ;
5. Date of incident	15 th January 2019
6. Date of arrest	16 th January 2019
7. Date of filing of Charge-sheet	10 th April 2019

3. The prosecution case is set out in the Bail Application in paragraph 3. The relevant portion of paragraph no.3 is set out herein below:

“3. It is the case of the prosecution that; There was some enmity between the informant Kunal Anil Korde and accused Kunal Bapu Kapse on the ground that the informant was having love affair with one Prerna Deelip More who was earlier having love affair with Kunal Kapse. On 15.01.2010 at around 20.00 hours, 3 of the accused Kunal Pagre, Kiran Satale and Vishal Bhagvati threatened the informant and slapped on him. Thereafter, the informant telephoned Arbaj Sheru Pathan who came there and slapped the said 3 accused and they went away. Thereafter, at around 21.00 hours, when the informant was passing from Kalpana Kirana Stores, all the 16 accused were present there and on seeing the informant and others abused them and assaulted them. Out of the said accused No.1 Bobby Jagdane and Vishal Bhagvati assaulted Arbaj Pathan with a chopper, and knife respectively. Thereafter, all the accused ran away. The said Arbaj Pathan was taken to Civil Hospital, Nashik where he was declared dead. Thereafter, on the information of the informant, aforesaid offence was registered.”

4. At the outset, Mr. Vagal, learned Counsel for the Applicant states that the Applicant is not seeking bail on merits but only on the ground of prolonged incarceration.

5. It is the contention of Mr. Vagal, learned Counsel for the Applicant that the Applicant is incarcerated since 16th January 2019. The Applicant has completed more than 5 years and 4 months under incarceration. He submitted that not a single witness has been examined by the prosecution till date and that even the Charge has not framed. He therefore submitted that the Applicant is entitled to be released on bail for violation of the Applicant's fundamental right to

speedy trial.

6. Mr. Vagal, learned Counsel for the Applicant submitted that there are total 16 persons involved in the offence out of which 5 are children in conflict with law. He submitted that all Accused except for the Applicant have been released on bail. The Applicant is a young person and was aged 19 years when the incident took place.

7. On the other hand, Mr. Mangaonkar, learned APP vehemently opposed the Bail Application and pointed out the detailed Affidavit dated 22nd April 2024 of Mr. Santosh Narote, Police Inspector of Bhadrakali Police Station, Nashik. He submitted that the Applicant has played a major role in the offence in question. The Applicant had assaulted the deceased with a chopper. He pointed out the Post-Mortem Examination Report and prayed that the Applicant be released on bail.

8. Perusal of record shows that the incident in question took place on 15th January 2019, F.I.R. was lodged 16th January 2019, the Applicant was arrested on 16th January 2019 and the Charge-sheet was filed on 10th April 2019. Till date, there is no progress in the trial and even the Charge is not framed yet. All Accused except the present Applicant have been released on bail.

9. 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

10. As the trial has not commenced despite the Applicant being incarcerated for 5 years and 4 months, there is a gross violation of the Applicant's fundamental right to speedy trial. As per the Charge-sheet, there are 41 witnesses proposed to be examined by the prosecution. Therefore, the trial is likely to take a considerably long time. Accordingly, the Applicant is entitled to be released on bail on the ground of prolonged incarceration.

11. Mr. Vagal, learned Counsel for the Applicant states that as several witnesses are residing in the same locality as that of the Applicant, the Applicant will therefore not reside within District - Nashik and that the Applicant will reside at C/o. Ms. Lalita Kishor Kamble, Manish Apartment, Modikhana, Jalna, District - Jalna.

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

13. The Applicant does not have any criminal antecedents.

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

15. In view thereof, the following order:

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

ORDER

(a) The Applicant - Bobby Bathwel Jagdane be released on bail in connection with C.R. No.37 of 2019 registered with the Bhadrakali Police Station, Nashik, District - Nashik on his furnishing P.R. Bond of Rs.50,000/- with one or two local solvent sureties in the like amount.

(b) The Applicant shall not enter the Nashik district 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 Sadar Bazar Police Station, Jalna, District - Jalna once every week, on every Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Sadar Bazar Police Station, Jalna, District - Jalna 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 prosecution witnesses 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.

16. The Bail Application is disposed of accordingly.

17. It is clarified that the Trial Court shall decide the case on its merits, uninfluenced by the *prima facie* observations made in this Order.P

[MADHAV J. JAMDAR, J.]