

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.57 OF 2024

Hasan Jamir Shaikh	...	Appellant
Vs.		
State of Maharashtra and another	...	Respondents

Mr. Mithilesh Mishra a/w. Mr. Gopal Bhosale for Appellant.
Mr. S. H. Yadav, APP for Respondent No.1 – State.
Ms. Chaitrali Deshmukh (appointed from Legal Aid Panel) for Respondent No.2.
Mr. P. S. Galunde (P.C.), Bhigwan Police Station, Pune.

CORAM : MANISH PITALE, J.
DATE : FEBRUARY 21, 2024

P.C. :

. Heard learned counsel for the appellant (accused), as well as the learned APP and the learned counsel appearing for respondent No.2 (complainant).

2. This is the third occasion on which the appellant is constrained to move this Court for grant of bail. His earlier two appeals did not result in a positive order for grant of bail. On the first occasion, by an order dated 09.04.2021, this Court rejected the appeal. While on the second occasion, by an order dated 11.07.2023, this Court permitted the appellant to withdraw the appeal, while a direction was issued to the trial court to conclude the trial as expeditiously as possible and within a period of four months from the date of the order. In the event the trial was not completed in the said period of time, liberty was reserved for the appellant to apply for bail afresh. Consequent thereto, since the trial was not concluded and, in fact, not a single witness was examined after the aforesaid order dated 11.07.2023 was passed by this Court, the appellant has moved this appeal to renew his prayer for bail by

challenging the impugned order dated 23.10.2021, passed by the Additional Sessions Judge, Baramati, being the Special Court for trying the offences with which the appellant is charged (hereinafter referred to as the 'Special Court').

3. The appellant, in the present case, is charged with offences under Sections 376, 341, 394, 504, 506 r/w. Section 34 of the Indian Penal Code, 1860 (IPC) along with offences under Sections 3(1)(r) (s) (w) and 3(2)(v-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'Atrocity Act').

4. Although the offences with which the appellant is charged are serious in nature, the learned counsel appearing for the appellant submits that the appellant has been in custody for about four and half years. He was arrested on 13.08.2019 in pursuance of registration of FIR on 28.07.2019.

5. It is submitted on behalf of the appellant that in the order dated 09.04.2021, when this Court dismissed the appeal of the appellant on the first occasion, one of the factors taken into consideration was pendency of 19 cases registered against the appellant. It is brought to the notice of this Court that in 2 of the 19 cases, the appellant has been acquitted and he has been granted bail in all the other cases. It is further submitted that this Court may consider releasing the appellant on bail on appropriate conditions, which the appellant undertakes to abide by. It is submitted that the prosecution intends to examine 21 witnesses in the present case and despite the directions issued in the order dated 11.07.2023, when this Court disposed of the appeal filed on the second occasion by the appellant, the trial has not moved forward at all. It is brought to the notice of this Court that recently, the trial has been shifted to another Court. In these circumstances, it is submitted that this Court may

consider releasing the appellant on bail.

6. On the other hand, the learned APP submits that the offences with which the appellant is charged are very serious in nature. He is a habitual offender, which is evident from the aforesaid 19 cases registered against him. It is submitted that even if he has been released on bail in other cases, the present case involves serious offence under Section 376 of the IPC, as also serious offences under the provisions of the Atrocity Act. It is submitted that this Court may consider the effect of release of the appellant on bail on the complainant herein.

7. As the present case involves serious offence against woman and also offence under the Atrocity Act, the complainant was put to notice and she has appeared through advocate engaged from the panel of the Legal Aid Committee.

8. The learned counsel appearing for respondent No.2 - complainant expresses apprehension that if the appellant is released on bail, it may have an adverse effect on the trial, as there is every likelihood of the appellant influencing the witnesses and threatening the complainant (victim). On this basis, the prayer made in the present appeal is opposed.

9. The present appeal is listed before this Bench in pursuance of judgement and order dated **01.09.2023** passed by the Full Bench of this Court in the case of **Sanjay Krushna Katkar Vs. State of Maharashtra and another**, *Criminal Appeal No.949 of 2022*, wherein it was held that, such appeals shall be listed before the Bench of Single Judge. Subsequently, order dated 05.01.2024 passed by this Court (Coram : M. S. Karnik, J.) directed that the appeal be heard by this Court (Coram : Manish Pitale, J.).

10. Having considered the material on record and upon hearing the

learned counsel for the appellant, as also the learned APP and the learned counsel appearing for the complainant (victim), this Court is of the opinion that although seriousness of the offences, with which the accused is charged, is certainly a major consideration while deciding the prayer for grant of bail, the duration for which the accused has remained behind bars is also a relevant consideration. In the present case, it is undisputed that the appellant was arrested on 13.08.2019 and that he has remained behind bars since then. This indicates that the appellant has remained in custody for more than four and half years. There can be no doubt about the fact that if the appellant is eventually convicted for the offences for which he has been charged, he can be sentenced for upto imprisonment for life.

11. It is also an admitted position that the appeal filed by this appellant on the first occasion was dismissed on merits on 09.04.2021. But, one of the factors adverted to and relied upon by this Court was pendency of 19 other cases against the appellant, including offences concerning theft and robbery. The appellant has been acquitted in 2 of the 19 cases, and in the other cases, he has been released on bail. Apart from this, on the second occasion, when the appellant was constrained to approach this Court, while allowing the appellant to withdraw his appeal, by order dated 11.07.2023, this Court had reserved liberty for him to apply for bail afresh, in case the trial was not concluded within a period of four months from the date of the order.

12. The prosecution intends to examine 21 witnesses. Not a single witness has been examined till date and considering the pressure of work on the special court, it appears to be unlikely that the trial would conclude in the near future.

13. This Court is of the opinion that in such circumstances, where the prosecution is unable to ensure immediate and swift trial of the accused,

particularly when the accused has undergone substantial period in custody, the Court can treat it as a relevant circumstance while considering the prayer for grant of bail. In the present case, as noted hereinabove, the appellant has continued to remain in custody since 13.08.2019. The trial could not be completed within the stipulated period of time as directed in the order dated 11.07.2023 and not a single witness has been examined by the prosecution. Therefore, this Court is inclined to favourably consider the present appeal.

14. As regards the apprehension expressed on behalf of the respondent No.2 - complainant (victim), appropriate directions can be issued to the appellant, so as to ensure that he co-operates with the trial proceedings and he does not, in any manner, influence the witnesses or harass the victim.

15. In view of the above, the appeal is allowed. The impugned order passed by the Special Court at Pune is set aside. The appellant is directed to be released on bail in connection with C.R. No.307 / 2019 registered at the Bhigwan Police Station, Pune, on the following conditions:-

- a. The appellant shall furnish a P.R. bond of Rs.50,000/- and surety of a like amount to the satisfaction of the aforesaid Special Court;
- b. The appellant shall not enter District Pune during the pendency of the trial, except for attending the dates before the Special Court at Pune;
- c. The appellant shall give the details of the place of his residence upon being released on bail, before the trial court within one week of his release. He shall also give the details of the local police station within whose jurisdiction, he shall be residing;

- d. The appellant shall report to such local police station on every second and fourth Monday of the month during the pendency of the trial;
- e. The appellant shall not, in any case, enter Village - Indapur, District - Pune, during the aforesaid trial;
- f. The appellant shall not, in any manner, contact the respondent No.2 (complainant) or her family members and / or the witnesses;
- g. The appellant shall not take any steps, which would have the effect of influencing witnesses or tampering with evidence. He shall also co-operate with the aforesaid Special Court for expeditious disposal of the trial;

16. In the event, the appellant violates any of the aforesaid conditions, the respondents would be at liberty to move appropriate proceedings for cancellation of bail.

17. The appeal is disposed of.

(MANISH PITALE, J.)

Minal Parab