

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.4219 OF 2023

Vishnu @ Bablu Vasant Gavali	...Applicant
<i>Versus</i>	
The State of Maharashtra	...Respondent

WITH
INTERIM APPLICATION (ST) NO.5706 OF 2024
IN
CRIMINAL BAIL APPLICATION NO.4219 OF 2023

Chetan Mahadev Yadav	...Applicant
<i>Versus</i>	
The State of Maharashtra	...Respondent

Mr. Kuldeep Patil a/w. Mr. Nikhil Hire, Mr. Rohin R. Chauhan, Mr. Soham Pawar, Advocates for the Applicant.
Mr. P. H. Gaikwad, APP, for the Respondent-State.
Mr. Vivek N. Arote, Advocate for the Applicant in IAST/5706/2024.
Mr. Shekhar Mokate, P.S.I., Lashkar Police Station, Pune present.

CORAM: MADHAV J. JAMDAR, J.
DATED : 14th MARCH 2024

P. C.:

1. This is the third Bail Application.

2. Heard Mr. Patil, learned Counsel for the Applicant, Mr. Gaikwad, learned APP, for the Respondent-State and Mr. Arote, learned Counsel for the Intervenor.

3. Mr. Patil, learned Counsel for the Applicant submits that although by order dated 5th April 2021, a learned Single Judge rejected the Bail Application, the learned Trial Court has been directed to conclude the trial within a period of one year. He submits that till date the trial is not concluded although almost 3 years have passed after the said order.

4. On the other hand, Mr. Gaikwad, learned APP for the Respondent-State submits that a co-accused-Pratik Gavali is not remaining present and therefore warrant was required to be issued. As said Pratik Gavali is not available at his house the said warrant could not be executed. He states that therefore, learned Additional Public Prosecutor who is in charge of the matter has taken steps and accordingly, Application under Section 82 of the Code of Criminal Procedure, 1973 ("CrPC") has been preferred and the same was allowed. He submits that the learned Additional Public Prosecutor has thereafter preferred an Application under Section 299 of the CrPC and accordingly, the said Application has been allowed permitting the prosecution to lead the evidence in absence of said Pratik Gavali. He states that the Application was also filed for framing additional charges against the Applicant. He

submitted that he has taken instructions from the concerned learned Additional Public Prosecutor and the concerned Investigating Officer who is present in the Court and that once the additional charge is framed, additional witnesses are required to be examined and therefore, trial will be concluded within a period of one month. He submitted that already 18 witnesses have been examined. He further pointed out order dated 11th January 2024 passed by a learned Single Judge (Coram: P. K. Chavan, J.) passed in Criminal Bail Application No.2607 of 2019 by which extension of six months was granted by way of last chance to conclude the trial.

5. Perusal of the record shows that the present Applicant's Bail Application bearing No.2730 of 2018 was rejected by a learned Single Judge (Coram: Anuja Prabhudessai, J.) by order dated 24th October 2018. The reasons for rejection of the first Bail Application are recorded by a learned Single Judge in paragraph Nos.5, 6 and 7 which read as under:-

"5. The aforesaid crime was registered pursuant to the first information report lodged by one Chetan Yadav, brother of injured Vivek. A

perusal of the FIR prima facie reveals that on 15th September, 2016, on the day immersion of Ganesh idol, the applicant along with others entered the procession. It is stated that the applicant was armed with a pistol and that he fired at his brother Vivek. He has stated that 250 to 300 people who were participating in the procession ran helterkelter and that several people suffered injuries due to the stampede. He has further stated that his brother was admitted in Ruby Hall Hospital. The statement of the injured also prima facie reveals that the applicant herein had fired a gun shot towards him and that he had sustained injuries. The statements of the other eye witnesses also prima facie indicate that the applicant was armed with pistol and that he had fired a gun shot. The medical certificate prima facie indicates that there was entry as well as exit wound on the lateral part of jaw and that there was also shattered fracture of lower jaw. The doctor has opined that the said injuries were grievous in nature. The medical evidence prima facie supports the case of the prosecution.”

“6. In the light of the above material, the contention of the learned Counsel for the applicant that said crime has been registered due to political rivalry

cannot be accepted at this stage. Even otherwise, at the stage of bail this court is not required to appreciate the evidence or undertake detailed examination of evidence and elaborate documentation of the merits of the case. At this stage, the Court is required to consider amongst other circumstances, the nature of accusation and supporting material, severity of punishment, reasonable apprehension of tampering with the witnesses, criminal antecedents etc. In the instant case, the material on record indicates that the applicant herein had fired a gun shot on the injured Vivek. The nature of the weapon used, as well as the part of the body on which the injury was inflicted prima facie brings the offence within the ambit of Section 307 of IPC. The gravity of the offence and the supporting material thereof does not justify grant of bail.”

“7. The learned APP has placed on record a chart to show that the applicant was involved in four crimes. The learned Counsel for the applicant has submitted that out of these four crimes, the applicant has been acquitted in two crimes. Nevertheless, the records reveal that the applicant is facing trial in respect of two other crimes. Crime No.157 of 2014 registered with Lashkar Police Station for the offences under Section 143, 147, 307, 326 r/w. 149 of IPC and Crime No. 171/2014 registered Vanvadi Police Station for the offence under Section 394, 427 r/w.

34 of IPC and Section 4(25) of Arms Act. Considering the nature of the offence as well as the criminal antecedents of the applicant, in my considered view, this is not a fit case for grant of bail. Hence the application stands rejected.”

(Emphasis supplied)

6. The Second Bail Application was preferred bearing Bail Application No.2607 of 2019. The said Bail Application has also been dismissed by order dated 5th April 2021 by learned Single Judge (Coram: Smt. Anuja Prabhudessai, J.) by giving following reasons in paragraph No.3:-

“3. While dismissing the previous bail application, this Court had taken into consideration the statement of the injured as well as the statements of other eye witnesses and held that the material on record prima facie indicates that the Applicant was armed with pistol and he had fired a gunshot. The medical evidence also indicates that there was entry as well as exit wound on the lateral part of the jaw and there was shattered fracture of lower jaw. Upon considering the material on record, this Court had opined that the material on record prima facie indicates that the applicant was involved in committing a serious offence. The Court had also

taken into consideration the criminal antecedents of the Applicant. It was noted that Crime No. 157 of 2014 was registered against the Applicant for offence under Section 143, 147, 307, 326 r/w. 149 of IPC and Crime No.171 of 2014 was registered for offence under Section 394, 427 r/w. 34 of IPC and Section 4(25) of Arms Act. Counsel for the Applicant also concedes that the Applicant has been convicted for offence under Section 302 IPC. He however submits that appeal is pending before this Court. Nevertheless, considering the nature of the offence, as well as the criminal antecedents, in my considered view, this is not a fit case for grant of bail solely on the ground that there is delay in conducting the trial.”

(Emphasis supplied)

7. Thus, it is clear that a learned Single Judge has taken into consideration the manner in which the incident has occurred. The Applicant was armed with a pistol and he fired a shot. It is also observed that medical evidence also indicates that there was entry as well as exit wound on the lateral part of the jaw and there was shattered fracture of lower jaw. A learned Single Judge has also taken into consideration that the Applicant was also involved in four other offences. Mr. Gaikwad, learned APP states that the

Applicant is involved in six offences including the present offence. He states that two cases are registered *inter alia* under Section 302 of the Indian Penal Code (“IPC”), two cases are registered *inter alia* under Section 307 of the IPC and one case is registered *inter alia* under Section 353 of the IPC. The details of all these cases are as follows:-

Sr. No.	C.R. No.	Police Station	Under Sections
1	370/1990	Khadki Police Station	302, 323, 34 of the IPC.
2	104/1998	Deccan Police Station	302, 34, 120-B of the IPC 3(25), 4(25) of the Arms Act, 1959
3	431/1999	Lashkar Police Station	353, 331, 504 of the IPC
4	157/2014	Lashkar Police Station	307, 326, 143, 147, 149 and 504 of the IPC
5	171/2014	Wanwadi Police Station	394, 427, 34 of the IPC 3(25) of the Arms Act, 1959
6	158/2016 (present C.R.)	Lashkar Police Station	307, 143, 147, 148, 149 of the IPC 3(25) of the Arms Act, 1959 37(1) r/w. 135 of the Maharashtra Police Act, 1951

8. Thus, no case is made out for granting bail. However, Mr. Patil, learned Counsel for the Applicant is right in submitting that the trial is required to be concluded expeditiously. As noted herein above already 18 witnesses have been examined. The trial was delayed as Accused-Pratik Gavali who is on bail has remained absent and therefore, prosecution has to take steps under Section 82 of the CrPC and thereafter under Section 299 of the CrPC.

9. Accordingly, even a learned Single Judge by order dated 11th January 2024 passed in second Criminal Bail Application No.2607 of 2019 has already extended a time to conclude the trial by six months as a last chance.

10. Mr. Gaikwad, learned APP on instructions states that trial will be concluded against the present Applicant within a period of one month from today.

11. Accordingly, no case is made out for granting bail. However, the Applicant is granted liberty to file a fresh Bail Application, if trial is not concluded within a period of one month from today.

12. Accordingly, the Bail Application is rejected.

13. In view of the dismissal of the Bail Application nothing survives in the Interim Application and the same is also dismissed.

[MADHAV J. JAMDAR, J.]