

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

BAIL APPLICATION NO. 865 OF 2024

Tahir Khalil Khan	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Gaurav Bhawnani a/w Mr. Avesh Qureshi i/by Mr. Khan Abdul Wahab for the Applicant.

Mr. Balraj B. Kulkarni, APP for Respondent-State.

Mr. Dnyaneshwar S. Sonawane, PSI, Deonar Police Station.

**CORAM: MANISH PITALE, J.
DATE : 19th SEPTEMBER 2024**

P.C. :

. Heard learned counsel for the applicant and learned APP for the respondent-State.

2. The applicant is seeking bail as he was arrested on 2nd June 2018 in connection with FIR No. 149 of 2018 dated 2nd June 2018 registered at Deonar Police Station, Mumbai, for offences under Sections 302 and 506(2) read with 34 of the Indian Penal Code, 1860 (IPC) and Section 37(1) read with 135 of the Maharashtra Police Act, 1951. The applicant has remained behind bars since the date of his arrest i.e. for a period of about 6 years and 3 months.

3. There are 3 accused persons in the present case, of whom only the applicant has remained behind bars, while the other two

co-accused persons have been granted bail.

4. Although, in the present case, considering the allegations levelled against the accused persons, it can be said that the applicant is the main accused as he is alleged to have used a knife to assault the victim, while the co-accused persons were alleged to have assaulted by means of fists and kicks, the present bail application has been pressed primarily on the ground of long incarceration and slow pace of the trial.

5. The learned counsel for the applicant submits that in the present case, the charge-sheet was filed as far back as on 27th August 2018 and charge was framed on 1st October 2022 and yet, till date, only 4 witnesses have been examined, while the charge-sheet has given a list of 22 witnesses proposed to be examined by the prosecution. It is submitted that considering the slow pace of the trial and long incarceration already suffered by the applicant, this Court may consider enlarging the applicant on bail by imposing appropriate conditions.

6. Reliance is placed on the judgments of Supreme Court and orders passed by this Court, granting bail to similarly situated accused under-trials, who had suffered considerable period of incarceration and the trial was not likely to be completed within a reasonable period of time. It was emphasized that seriousness of the offence would be of no consequence, when considering the question of enlarging the accused under-trial on bail on the ground

of long incarceration and remote possibility of the trial being completed within a reasonable period of time.

7. On the other hand, the learned APP submitted that 4 witnesses have been already examined. The prosecution intends to examine only 17 to 18 witnesses in all, thereby indicating that about 13 to 14 more witnesses are to be examined. It is submitted that appropriate directions can be issued for expediting the trial instead of granting bail to the applicant, particularly when the applicant has no case on merits to be enlarged on bail. It is further brought to the notice of this Court that the witnesses in the present case are residents of the neighbourhood and allowing the present application may adversely affect the trial, as the applicant may influence the witnesses living in the neighbourhood.

8. This Court has considered the rival submissions in the light of the material placed on record. The Supreme Court in various judgments, including in the case of *Union of India v/s. K. A. Najeeb*, (2021) 3 SCC 713, has emphasized the role of Constitutional Courts while dealing with bail applications filed by accused under-trials, who have suffered incarceration for the substantial periods of time. The Supreme Court has laid down that right to speedy trial is a facet to life under Article 21 of the Constitution of India. In cases where the accused under-trials have suffered long incarceration and there is remote possibility of the trial being completed within a reasonable period of time, Constitutional Courts ought to exercise their power to grant bail.

The said position of law has been followed consistently over a period of time and in recent judgments in the case of *Javed Gulam Nabi Shaikh v/s. The State of Maharashtra, 2024 SCC OnLine SC 1693* and in the case of *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v/s. The State of Uttar Pradesh, 2024 SCC OnLine SC 1755*, the Supreme Court has reiterated the position of law. In fact, it is indicated that merely because the accused under-trial is facing prosecution for serious offences, it cannot be said that the aspect of long incarceration is to be ignored. In cases where bail is sought concerning offences under special statutes, where the scope of granting bail is reduced due to stringent tests, the Supreme Court has said that such statutory provisions would not come in the way of the Constitutional Courts in exercising their power to enlarge accused under-trials on bail, who have suffered long incarceration and the process of trial is found to be extremely slow.

9. In fact, reliance placed by the learned counsel for the applicant on a recent order of the Supreme Court dated 14th December 2023 passed in the case of *Mohabbatali Anwarali Khan @ Chinku v/s. The State of Maharashtra (Criminal Appeal No. 3826 of 2023)* is appropriate, for the reason that in the said case, the Supreme Court enlarged the accused under-trial on bail, despite the fact that the trial had commenced. The Supreme Court took note of the fact that only 1 witness had been examined and there were 56 witnesses to be examined by the prosecution,

indicating that the trial was not likely to be completed in the near future.

10. Applying the said position of law to the facts of the present case, this Court finds that although, a specific direction was issued in the order dated 25th October 2021 passed by this Court in an application for bail moved on behalf of the co-accused person, to frame charges within 9 months from the date of the said order, eventually, charge was framed after almost a year on 1st October 2022. The charge having been framed as on 1st October 2022, the trial actually commenced much later on 14th June 2023. As on today, only 4 witnesses have been examined in a period of 1 year and 3 months and if the prosecution intends to examine 14 more witnesses, it becomes clear that the trial will not be completed in the near future or within a reasonable period of time.

11. It is to be noted that the applicant has already suffered incarceration for about 6 years and 3 months. As there is remote possibility of the trial being completed within a reasonable period of time, the position of law indicated by the Supreme Court in the aforementioned judgments applies squarely to the present case and only on the said ground, the applicant deserves to be enlarged on bail.

12. As regards, the anxiety expressed by the learned APP that the trial may be adversely effected, as the witnesses are residing in the neighbourhood, appropriate directions can be issued to the

applicant while granting bail.

13. In view of the above, the application is allowed in the following terms:

- (a) The applicant shall be released on bail in connection with FIR No.149 of 2018 dated 2nd June 2018 registered at Deonar Police Station, Mumbai, on furnishing P.R. Bond of ₹25,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.
- (b) The applicant shall report to Ghatkopar Police Station, Mumbai, on first Monday of each month between 10:00 a.m. and 12:00 noon, during the pendency of the trial. The applicant shall attend the trial Court on each and every date, unless specifically exempted by the trial Court.
- (c) The applicant, during the pendency of the trial, shall not enter the jurisdiction of Deonar Police Station, Govandi Police Station, Mankhurd Police Station and Shivaji Nagar Police Station.
- (d) The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses or any other person concerned with the case.

- (e) The applicant, upon being released on bail, shall place on record of the trial Court the details of his Contact Number and residential address with updates in case of any change.

14. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled. It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

15. The application is disposed of.

MANISH PITALE, J.