

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1031 OF 2024**

Vishal @ Bobby Shankar Bhoir	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Raviraj Rajaram Paramane a/w. Mr. Deva L. Shinde for applicant.

Ms. Rutuja Anil Ambekar, APP for respondent-State.

CORAM : MANISH PITALE, J.

DATE : 18th DECEMBER, 2024

P.C. :

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

2. The applicant was arrested on 19.05.2017 in connection with FIR No.114 of 2017 dated 09.05.2017, registered at Dombivali Police Station, District Thane, for offences under Sections 302, 307, 364, 452, 201, 143, 144, 146, 147, 148, 149, 323, 504, 506 and 120-B of the Indian Penal Code, 1860 and Sections 3, 25, 27 and 30 of the Arms Act, 1959.

3. The applicant is one of the 11 accused persons, who are alleged to have indulged in firing upon the victims, resulting in death of one of the victims at the spot, injury to another and one victim being allegedly taken out from the place of the incident and subsequently, being killed.

4. The learned counsel for the applicant submitted that upon completion of investigation, charge-sheet was filed and charge was

framed in the year 2022 with a list of 94 witnesses being submitted before the trial Court on 16.09.2022. Yet, not a single witness has been examined till date.

5. The learned counsel for the applicant submitted that apart from the aspect of long incarceration and there being hardly any possibility of the trial being completed within reasonable period of time, the applicant also has a good case on merits. It is submitted that one of the accused persons was granted bail by order dated 16.02.2023 passed by this Court (Coram: M. S. Karnik, J) in Bail Application No.4039 of 2021, considering the fact that only the presence of the said co-accused person was mentioned in the statements of the eye-witnesses. It was submitted that although in the present case, one person who claims to be an eye-witness, indeed has taken the name of the applicant and attributed overt act to him, the said statement was recorded 8 days after registration of the FIR and importantly, neither the first statement of the informant, nor his supplementary statement mentioned the presence of the applicant. Reference was also made to the statement of another witness i.e. the secretary of the society where the incident took place, wherein she has referred to the CCTV footage. In the said statement also, while the names of the co-accused persons are taken, the name of the applicant is conspicuous by its absence. It is alleged that other family members of the applicant i.e. father, uncle and cousins were all named by the informant in the first instance itself. But the name of the applicant has cropped up much later, thereby indicating that an attempt is made to rope in all the members of the family.

6. The learned APP has vehemently opposed the present application, submitting that the statement of the witness who has

named the applicant and also described the overt act on his part, could be recorded only on 17.05.2017, while the incident took place on 09.05.2017, for the reason that the said witness was seriously injured in the incident and he was admitted in hospital. This sufficiently explains the time gap between the occurrence of the incident and the recording of his statement. It was emphasized that while the said witness was inside the room when the incident of firing took place, the informant was initially inside the room. But, he was taken out from the room, thereby showing that when the actual act of firing was undertaken, the informant was not inside the room and therefore, the applicant cannot take advantage of the fact that his name was not mentioned by the informant. It was further submitted that according to the prosecution, the applicant is one of the assailants and therefore, he has no case on merits.

7. On the aspect of the trial being delayed, there was delay due to Covid-19 and also because of repeated applications for bail being moved by the eleven accused persons. It was submitted that this Court may expedite the trial.

8. This Court has considered the rival submissions, in the light of the material on record. It is to be noted that the informant in the present case neither named the applicant in his statement that led to registration of FIR on 09.05.2017, nor in his supplementary statement recorded on the next day i.e. on 10.05.2017. The informant was very much in the room, when the assailants entered and fired the first shot. It is then stated that one of the accused persons pulled the informant and took him outside the room. But, it is crucial to mention that the informant having been inside the room at the start of the incident, did name the other accused persons,

particularly the father, uncle and cousins of the applicant, thereby showing that he was familiar with the applicant and his family members. But, he did not name the applicant as being present with revolver in his hands in the room at the time when the incident occurred. In the supplementary statement also, the informant did not refer to the name of the applicant and he did not even state that the applicant was present alongwith other co-accused persons.

9. It is also relevant to note that one of the witnesses i.e. the secretary of the society, wherein the incident took place, has referred to the CCTV footage relevant to the incident. The said witness has also referred to the co-accused persons i.e. the family members of the applicant. But, she has not referred to the applicant as one of the persons present and seen in the CCTV footage. Since the said witness has also named the other accused persons, who are family members of the applicant and she has stated that she knew them as residing in the vicinity, there was no reason why she could not identify the applicant in the CCTV footage, who was alleged to have been present with the co-accused persons with revolver in his hands. The statement of the said witness was recorded on 11.05.2017.

10. In this backdrop, it is relevant to note that the statement of the lone witness, who has taken the name of the applicant, was recorded 8 days after the incident i.e. on 17.05.2017. Undoubtedly, the statement indicates that the said witness was injured and hence, hospitalized, thereby indicating as to why his statement could be recorded only on 17.05.2017. But, in the aforesaid statement, not only is the presence of the applicant mentioned, but a major role is attributed to him. It is alleged at two places that the applicant was firing repeatedly on the victims by means of revolver. If that be so,

the presence of the applicant could certainly have been noticed in the CCTV footage and it would not have escaped attention of the informant. But, as noted hereinabove, the applicant's name does not find mention either in the statement and supplementary statement of the informant, or in the statement of the witness, who has referred to the CCTV footage recovered during the course of investigation.

11. If nothing else, the applicant has succeeded in making out a *prima facie* case in his favour about there being discrepancy or variance in the statements of the alleged eye-witnesses.

12. Apart from this, it is an admitted position that charge in the present case was framed as far back as in the year 2022. The prosecution submitted a list of as many as 94 witnesses on 16.09.2022 and yet, till date, not a single witness has been examined. In the meanwhile, the applicant has suffered incarceration for a period of about 7 years and 7 months.

13. The Supreme Court, in a number of judgments, has indicated that in such circumstances, when the accused undertrial has suffered long incarceration and there is hardly any possibility of the trial being completed within reasonable period of time, the Constitutional Courts must exercise their power to allow the bail applications. This position has been reiterated recently in the case of *Javed Gulam Nabi Shaikh vs. State of Maharashtra and another* (2024 SCC OnLine SC 1693), wherein after referring to a number of precedents, it is emphasized that the seriousness of the offences alleged against the undertrials, cannot be a ground to deny bail and even in cases concerning special statutes, where the accused undertrials are required to satisfy higher threshold for granting bail, the

Constitutional Courts ought to exercise their power, where there is no possibility of the trial being completed within reasonable period of time and the accused undertrials have suffered long incarceration.

14. Therefore, apart from merits, the applicant has made out a case on the aforesaid aspect of the matter also, for allowing his bail application.

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

- (i) The applicant shall be released on bail in connection with FIR No.114 of 2017 dated 09.05.2017, registered at Dombivali Police Station, District Thane, on furnishing PR Bond of ₹ 25,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.
- (ii) The applicant shall remain outside the jurisdiction of Dombivali Police Station, during the pendency of the trial.
- (iii) The applicant, upon being released on bail, shall report to Thane Crime Branch on the first Monday of every month between 10:00 a.m. and 12:00 noon during the pendency of trial.
- (iii) Upon release, within one week, the applicant shall inform the Investigating Officer as well as the trial Court about his contact number and residential address and update the same in case of any change.
- (iv) The applicant shall co-operate with the trial Court in completing the proceedings expeditiously and attend the proceedings before the trial Court on each and every date, unless specifically exempted, for the reasons to be recorded in writing.
- (v) The applicant shall not tamper with the evidence of the

prosecution in any manner. He shall not undertake any action that may influence the informant, witnesses and other persons concerned with the case.

16. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions is violated.

17. It is also clarified that the observations made in this order are limited to the disposal of the present bail application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

18. The application is disposed of.

(MANISH PITALE, J)