

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

BAIL APPLICATION NO. 1186 OF 2024

Vishalkumar Sukhraj Nigam ... Applicant
Versus
The State of Maharashtra ... Respondent

Mr. Shriganesh Sawalkar (through V.C.) for the Applicant.
Mr. Balraj B. Kulkarni, APP for Respondent-State.

**CORAM: MANISH PITALE, J.
DATE : 27th NOVEMBER 2024**

P.C. :

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

2. The present bail application was listed earlier, when the learned counsel for the applicant had highlighted the fact that the applicant is suffering from AIDS. In fact, in paragraph 9 of the application, it is specifically stated that the applicant was diagnosed with HIV in 2017 and he has been taking medication in that regard from the said year onwards.

3. Considering the fact that the applicant in the present case was arrested as far back as on 7th December 2016, this Court had directed the concerned trial Court to complete the proceedings in the sessions case at the earliest, particularly because this Court was informed that the trial was at the fag end. It was stated that only

the Investigating Officer was to be examined. In that light, this Court kept the present bail application pending and directed that the trial be completed and judgment be rendered, preferably within a period of 5 weeks from the date of the order i.e. 24th September 2024.

4. This application was listed yesterday, when the learned counsel for the applicant informed this Court that there was not much progress in the proceedings before the trial Court, despite the specific directions given by this Court.

5. The learned APP also confirmed the fact that the Investigating Officer was yet to be examined.

6. In this backdrop, the application was taken up for consideration and for final disposal.

7. The learned counsel for the applicant submitted that apart from the aspect of long incarceration suffered by the applicant, even on merits, the applicant has a good case. He referred to the documents and material filed along with the charge-sheet to support the aforesaid contention. It was submitted that the applicant may be enlarged on bail.

8. On the other hand, the learned APP submitted that the statements of the witnesses in the present case sufficiently indicated that the applicant, having common intention with the co-accused person, with whom he was having an affair, caused the

death of minor child of the co-accused person. It is submitted that in the light of seriousness of the offence and the material on record indicating involvement of the applicant, this Court may not show any indulgence.

9. Having heard the rival submissions, this Court is inclined to allow the application. It is to be noted that this is a case of circumstantial evidence as there is no eye-witness to the incident. The allegation is that the co-accused lady, who was a widow, was having an affair with the applicant and in that backdrop, both the accused persons caused the death of minor child of the co-accused lady.

10. Since there is no eye-witness to the incident, the prosecution is relying upon statements of the witnesses recorded during the course of investigation. The aforesaid statements do indicate that the applicant had taken the minor child to the hospital and that he was declared dead by the Doctors at the hospital. The postmortem report shows that the cause of death was recorded as death due to hemorrhagic shock due to ruptured spleen and liver. The report also shows internal injuries and some external injuries to the body of the child. This clearly indicates that the child was indeed assaulted. Even as per the report leading to registration of the FIR, the allegation against the applicant appears to be that he held the child while the co-accused physically assaulted the child, causing injuries and eventually, his death.

11. Considering the fact that this is a case of circumstantial evidence and even the Investigating Authority appears to have placed the blame of actual physical assault on the co-accused person, this Court is of the opinion that the applicant can be said to have made out a *prima facie* case in his favour.

12. Apart from the aforesaid aspect, this Court is of the opinion that the applicant having suffered incarceration from the date of his arrest i.e. 7th December 2016, the ground of long incarceration is certainly made out in favour of the applicant. Although, it was noted that the trial was at fag end and it could be completed at the earliest, despite the earlier order dated 24th September 2024 passed by this Court, the evidence of the Investigating Officer has not been recorded. It is to be noted that a specific statement is made in the application that the applicant is suffering from AIDS. Sufficient time was given to respondent-State to respond to the said contention raised in the application, but no specific statement was made. In this situation, it would be appropriate to proceed on the basis that the claim of the applicant of suffering from AIDS is correct. In such a situation, this Court is of the opinion that it would be in the interest of justice that the present application is allowed. Appropriate conditions need to be imposed, for the reason that the applicant appears to be originally a resident of Uttar Pradesh.

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. I-378 of 2016 dated 22nd November 2016 registered at Hill Line Police Station, Dist. Thane, for offence under Section 302 read with 34 of the Indian Penal Code, 1860, on furnishing P.R. Bond of Rs. 25,000/- and one or two sureties in the like amount.
- (b) The applicant shall report to the office of Hill Line Police Station, Dist. Thane, on first Monday of every month between 10:00 a.m. and 12:00 noon, till pendency of the trial.
- (c) The applicant shall cooperate with the trial Court for expeditious trial and he shall attend each and every date, unless exempted by the trial Court, for reasons to be recorded in writing.
- (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.