

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

BAIL APPLICATION NO. 1836 OF 2024

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

Mr. Parth M. Shah, Advocate, for the Applicant.

Ms. R. V. Newton, APP, for the Respondent-State.

Mr. Satyavrat Joshi i/by Mr. Vivek Arote, Advocate, for the Intervenor.

Mr. K. K. Waghmare, PSI, Lashkar Police Station, Pune, present.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 9 SEPTEMBER 2024**

P.C.:

1. Heard Mr. Shah, learned Counsel for the Applicant, Ms. Newton, learned APP for the Respondent-State and Mr. Joshi, learned Counsel for the Intervenor.

2. At the outset, it is required to be noted that this is the fourth Bail Application filed in this Court under Section 439 of the *Code of Criminal Procedure, 1973* (CrPC). The relevant details are as follows:-

1	C. R. No.	158 of 2016
2	Date of registration of F.I.R.	16.09.2016
3	Name of Police Station	Lashkar Police Station, Pune.
4	Section/s invoked	307, 143, 147, 148, 149, 120-B of I.P.C., 1860, 4(25) and 5(27) of Arms Act, Sec.

		37(1) r/w 135 of the Bombay Police Act.
5	Date of incident	15.09.2016
6	Date of arrest	26.09.2016

3. It is the submission of Mr. Shah, learned Counsel for the Applicant, that the present Bail Application is filed only on the ground of delay in trial. He submitted that by Order dated 14.03.2024, passed by this Court in Criminal Bail Application No. 4219 of 2023, Bail Application was rejected as it was represented by learned APP on instruction that the trial would be concluded within a period of 1 month. He submitted that by said order liberty has been granted to file fresh Bail Application, if trial is not concluded within a period of one month from the date of the said order. He submitted that present Bail Application is filed pursuant to liberty granted by this Court.

4. Mr. Shah Learned Counsel for the Applicant submitted that although the trial in the Sessions Case No. 1193 of 2016 is at the stage of recording statement under Section 313 of CrPC there is Counter Case filed by the brother of the Applicant i.e. the First Informant. He has given a chart of list of dates and events in the said Counter Case in which the Applicant's brother is the First Informant. The said list of dates and events in the Counter Case as submitted by Mr. Shah, learned Counsel

appearing for the Applicant is as under:

DATE	Events
15/09/2016	Date of Incident
16/09/2016	F.I.R. No. 159/2016, registered by brother of the injured viz. Deepak Vasant Gawali against Accused persons u/s 324, 143, 147, 148, 149 of I.P.C with Lashkar Police Station.
19/09/2016	Statement of the Injured (i.e. Applicant/Accused in the captioned matter) was recorded.
29/09/2016	Sec. 326 if I.P.C. was added subsequently after the Injury Certificate of the injured was received.
27/01/2017	Report submitted by the I.O with ACP seeking permission to file 'A Summary' report.
29/08/2017	I.O. files application in J.M.F.C. seeking release of the Accused persons from the crimes u/s 169 of Cr. P.C.
19/09/2017	Notice issued to First Informant by the Court to seek his Say on the Application filed by the I.O. u/s 169 of Cr.P.C.
22/11/2017	First Informant files an application in Court seeking directions for the I.O. to file all case papers.
16/12/2017	Hon'ble J.M.F.C. directs the I.O. to file all the documents relating to the investigation.

03/01/2021	First Informant expired due to Heart Attack.
27/05/2021	Vishnu @ Babul Vasant Gawali released on temporary bail as per the directions of the HPC in Covid-19.
29/10/2021	Vishnu @ Babul Vasant Gawali appeared in Lashkar P.S. C.R. No. 159/2016 and filed an application in the Hon'ble J.M.F.C seeking directions towards the I.O. to file all case papers as per the Order dated 16/12/2017.
	I.O. files report U/s 173 of Cr.P.C.
19/11/2021	First Protest Petition filed on behalf of Vishnu @ Bablu Gawali .
01/01/2022	Order below the Protest Petition dated 19/11/2021, wherein the Hon'ble J.M.F.C. was pleased to direct the I.O. to carry out further investigation in C.R. No. 169/2016, and file a report within two months.
27/04/2022	As Police filed the same report dated 29/08/2017, U/s 169 of Cr.P.C., a show cause application was preferred against the I.O. by the Advocate for the injured viz. Vishnu @ Bablu Gawali. Say of the I.O. was called for.
26/08/2022	Application for reconstruction of application dated 27/04/2022 as the main application was missing

	from the Original Court record.
14/09/2022	Protest Petition filed on behalf of the injured viz. Vishnu @ Bablu Gawali.
1/12/2022	Purshis filed on behalf of the Injured Witness stating that the Investigating Officer and the Public Prosecutor has failed to file their say on the Protest Petition filed on 14/09/2022.
06/12/2022	Public Prosecutor and I.O. filed their say on the Protest Petition dated 14/09/2022.
23/12/2022	Hon'ble J.M.F.C was pleased to issue process against the Accused persons namely Sudhir Motiram Yadav, Santosh Mahadeo Yadav, Sumeet Suresh Shinde, Sagar Ambadas Khandagale, Avinash Rajesh Pawar, Pankaj Vijay Jagtap and Chetan Mahadeo Yadav vide. Order in C.R. No. 159/2016.
28/02/2023	The said Accused persons challenged the order issuing process and filed a Cri. Revision Application bearing No. 87/2023 dated 28/02/2023 before the Hon'ble Sessions Court, Pune.
30/01/2024	The Hon'ble Sessions Court was pleased to reject the Cri. Revision Application No. 87/2023 preferred by the Accused.

5. Mr. Shah, learned Counsel for the Applicant also pointed out report dated 07.08.2024, submitted by learned District

Judge-6 and Additional Sessions Judge, Pune, wherein it is stated that atleast 1¹/₂ year will be required to dispose of the said Counter Case.

6. Mr. Shah, learned Counsel for the Applicant relied on the Judgments of the Supreme Court in the cases of *Nathilal Vs. State of U.P.*¹ and *Sudhir Vs. State of M.P.*² and submitted that as per the law laid down by the Supreme Court the Counter Cases are required to be tried one after another.

7. Mr. Shah learned Counsel for the Applicant submitted that as considerable time will be taken for disposal of the Counter Case, the Applicant is entitled to be released on bail, as the Applicant's fundamental right of speedy trial is violated. He submitted that the Applicant was arrested on 26.09.2016, and he was released on temporary bail due to COVID- 19 on 27.05.2021. He submitted that the Applicant surrendered to the jail authorities on 06.04.2023. He therefore submitted that by excluding the said period of temporary Bail due to COVID- 19 the Applicant is incarcerated for more than 6 years. He therefore submitted that the Applicant be granted Bail.

8. On the other hand Ms. Newton, learned APP appearing for the State-Respondent and Mr. Joshi appearing for the First

1 (1990 (Supp) Supreme Court Cases 145

2 (2001) 2 Supreme Court Cases 688

Informant/Intervenor submitted that the manner in which the offence is committed is considered by learned Single Judge while rejecting Applicant's Bail Application No. 2730 of 2018 by Order dated 24.10.2018. He submitted that even the second Bail Application preferred in this Court has also been rejected by learned Single Judge by Order dated 05.04.2021. Both of them pointed out Order dated 14.03.2024, passed by this Court in Cri. Bail Application No. 4219 of 2023 wherein the antecedents are set out. Therefore they submitted that the bail Application be rejected.

9. Mr. Joshi, learned Counsel submitted that on 27.01.2017, in the Counter Case the summary report was filed and first Protest Petition has been filed by the Applicant on 19.11.2021. Therefore he submitted that the Applicant has deliberately caused delay in the trial of the Counter Case and therefore the Bail Application on the ground of delay in concluding the trial in the Counter Case be rejected. He therefore submitted that the Bail Application be rejected. However, Mr. Shah, learned Counsel for the Applicant submitted that on 16.12.2017, learned J.M.F.C. directed the Investigating officer to file all the documents relating to the investigation and the said papers were filed in October, 2021.

10. The relevant paragraphs of the Order dated 14.03.2024 passed by this Court i.e. paragraph nos. 5 to 11 reads as under:

“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 helter skelter 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.

11. Thus this Court while rejecting the Bail Application has given detailed reasons and relied on Order dated 24.10.2018, as well as Order dated 05.04.2021, by which the learned Single Judge has rejected the earlier Bail Applications. The learned

Single Judge has taken into consideration the manner in which the incident had occurred when the Applicant was armed with the pistol and he fired at the injured. Learned Single Judge also took into consideration that the Applicant was also involved in 4 other offences.

12. While hearing earlier bail Application No/4219 of 2023, learned APP on instruction submitted that the trial would be concluded within a period of 1 month and therefore the said Bail Application was rejected, however liberty was granted to the Applicant to file fresh Bail Application if the trial is not concluded within a period of 1 month.

13. As the learned APP on the earlier occasion has submitted that the trial is almost at the fag end and at the stage of recording of statement under Section 313 of Cr.PC and in spite of that the trial was not concluded and therefore the report was called from the learned District Judge-6 and Additional Sessions Judge, Pune. Learned District Judge in his report dated 07.08.2024 has *inter alia* stated in paragraph No. 3 as follows:

“3. In connection with the above case, it needs to be mentioned here that counter case bearing No. 248/2024 of the present Sessions Case No. 1193/2016 has been committed to this court on 20/03/2024. The Sessions Case No. 248/2024 being counter case of the present Sessions Case needs to be heard and disposed of simultaneously. In the counter case, in all there are 7 accused persons and the witnesses are also in large

*number and the evidence is also bulky. Since it is recently committed the charge is not yet framed. Having regard to the huge pendency of old cases as well as cases of Under-Trials before this court, it will take considerable time of atleast one and half year to dispose of this counter case. It is humbly submitted that though statement under Section 313 of the accused persons in Sessions Case No. 1193/2016 is recorded even then, the said case cannot be disposed of unless and until the evidence and statement under Section 313 of Cr. P. C. of the accused persons in Sessions Case No. 248/2024 which is a counter **Nathilal vs. State of U. P (1990 (Supp) SCC 145)** case, are recorded. This court will try to give priority for proceeding with this counter Sessions Case No. 248/2024 also. Hence, the report submitted for Your Honour's kind perusal."*

14. The said course of action as set out in report of the learned Trial Court is required to be followed in view of the observations in paragraph No. 2 of the Supreme Court in the case of **Nathilal** (supra) the said paragraph no.2 reads as under:

"We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor

can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.”

15. The Applicant is incarcerated since 26.09.2016, (excluding the period of 27.05.2021 to 06.04.2023). Thus the Applicant is behind bar for about 6 years. The trial is not likely to conclude within short time in view of the pendency of the Counter case.

16. There is substance in the contention raised by Ms. Newton, learned APP and Mr. Joshi, learned Counsel appearing for the First Informant that there are several antecedent including CR. No. 104 of 1998 registered under Section 302, 34, 120-B of the *Indian Penal Code, 1860* with the Deccan Police Station, Pune in which the Applicant has been convicted. However in the Appeal challenging said conviction the Applicant has been granted bail.

17. Ms. Newton, learned APP and Mr. Joshi, appearing for the First Informant submitted that when the applicant was released on bail in the said offence the Applicant had committed the present offence which is under Section 307 of the IPC. Mr. Shah,

learned Counsel appearing for the Applicant with respect to the said submission has relied on order of learned Single Judge dated 19.10.2022, passed in Criminal Bail Application No. 312 of 2021 and more particularly on paragraph Nos. 7, 8 and 13 of the said Order. The said paragraph Nos. 7, 8 and 13 reads as under:

“7. In the case of Shaheen Welfare Association Vs. Union of India and others (1996) 2 SCC 616, it was observed by the Supreme Court that it was necessary to grant relief to those persons who have been deprived of their personal liberty for a considerable length of time without any prospect of trial being concluded in the near future. Undoubtedly, the safety of the community and of the nation needs to be safeguarded looking to the nature of the offences these undertrials have been charged with. But the ultimate justification for such deprivation of liberty pending trial can only be their being found guilty of the offences for which they have been charged. If such a finding is not likely to be arrived at within a reasonable time some relief becomes necessary. The Court was dealing with the cases registered under the provisions of TADA Act. The Court was conscious of the fact that there is embargo for release of prisoners prosecuted for the offences of TADA u/s.20(8) of the said Act. The Supreme Court divided the undertrial prisoners under TADA based on their role/hard core criminals into various classes and by adopting pragmatic and just approach relief was directed to be granted considering gravity of the charges. The Courts were given discretion to consider grant/refusal of bail based on antecedents and on conclusion that there is no likelihood of harm to lives of complainant and others in the event of their release.

8. *In the case of Sanjay Chandra Vs. CBI AIR 2012 SC 830, it was observed that object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson. The grant or denial is regulated to a large extent by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused.*

The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.

13. *The settled principle of law is that prolonged*

custody affects fundamental rights under Article 21 of Constitution of India. There is no debate that incarceration in custody for long period without trial or completion of trial affects personal liberty guaranteed under Article 21 of Constitution of India.”

(Emphasis added)

18. Thus, this is a case where fundamental right of the Applicant of speedy trial is violated. In view of counter case and in view of the fact that the said counter case will be tried one after another, there is no possibility of conclusion of the trial anytime soon.

19. Speedy trial is one of the facets of right to life and liberty guaranteed under Article 21 of the Constitution of India. Speedy trial is an essential ingredient of “reasonable, fair and just” procedure guaranteed by Article 21 and it is the constitutional obligation of the State to devise such a procedure as would ensure speedy trial to the Accused.³ Therefore, the Applicant is entitled for bail.

20. However, it is required to be noted that there are several antecedents against the Applicant of very serious offences.

21. Mr. Shah, learned Counsel appearing for the Applicant states that as various antecedents are from District- Pune, the Applicant will therefore not reside within District- Pune and that the Applicant will reside at Gat No. 176, Mukkam- Jategaon,

³ Hussainara Khatoon (IV) v. Home Secy., State of Bihar, (1980) 1 SCC 98

Post- Pimplat, Taluka & District- Nashik.

22. The Applicant does not appear to be at risk of flight.
23. Accordingly, the Applicant can be enlarged on bail by imposing stringent conditions.
24. In view thereof, the following order:

ORDER

- (a) The Applicant - Vishnu @ Bablu Vasant Gavali be released on bail in connection with C.R. No.158 of 2016 registered with the Lashkar Police Station, Pune., District - Pune on his furnishing P.R. Bond of Rs.1,00,000/- with one or two solvent sureties in the like amount.
- (b) The Applicant shall not enter the Pune District after being released on bail, except for reporting to the Investigating Officer, if called and for attending the trial.
- (c) On being released on Bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (d) The Applicant shall report to the Wadivarhe Police Station, District - Nashik twice in a week i.e. on every Wednesday and Sunday between 11.00 a.m. and 1.00 p.m. until the conclusion of the trial. The Police Inspector of Wadivarhe Police Station, District - Nashik to communicate details thereof to the Investigating Officer.

- (e) The Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case, so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.
- (f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.
- (h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

25. The Bail Application is disposed of accordingly.

26. It is clarified that the Trial Court shall decide the case on its merits, uninfluenced by the *prima facie* observations made in this Order.

[MADHAV J. JAMDAR, J.]