

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2140 OF 2024**

Ali Abbas Jaffar Khan	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Shubham Kahite, i/b. Abhishek Yende for applicant.

Mr. Kiran C. Shinde, APP for respondent-State.

CORAM : MANISH PITALE, J.

DATE : 11th JUNE, 2024

P.C. :

- . Heard learned counsel for the applicant and the learned APP
2. By this application, the applicant is seeking bail in connection with FIR dated 27.04.2017, whereby the applicant is shown as an accused alongwith another accused person for having committed offences under the provisions of Indian Penal Code (IPC), Arms Act and Maharashtra Police Act.
3. At the outset, the learned counsel appearing for the applicant points out that while the FIR was registered on 27.04.2017, the applicant was arrested on 01.06.2017, thereby showing that he has remained behind bars for more than 7 years. It is submitted that the chargesheet was filed as far back as on 14.08.2017 and charge was framed in the year 2019 and yet, there is no progress in the trial.
4. Attention of this Court is invited to the statements made in the FIR and it is submitted that the active role in the said incident is attributed to the co-

accused person and the allegation against the applicant is that he was waiting outside the shop of the informant on a motor cycle, when the co-accused person allegedly opened fire and threatened the informant. It is further submitted that the applicant has not been identified by any of the alleged witnesses while their statements were recorded during the course of investigation.

5. It is further emphasized that the maximum punishment for offences registered against the applicant in the present case ranges from 7 years to 10 years and since the applicant has already undergone incarceration for a few days more than 7 years, this Court may favourably consider the present application. It is also pointed out that apart from the present case, there are 4 other criminal cases registered against the applicant, including the one in which Maharashtra Control of Organized Crime Act, 1999 has been invoked. It is submitted that by order dated 03.10.2023, passed in Bail Application No.535 of 2023 by this Court (Coram: M. S. Karnik, J), the applicant has been granted bail even in the said case.

6. On the other hand, the learned APP submitted that the period of incarceration which the applicant has undergone till date, cannot be denied. But, it has to be appreciated that in the information given by the informant leading to the registration of FIR, there is a clear reference made to association of the applicant with Suresh Poojari against whom as many as 41 cases have been registered and it is evident that the applicant is part of a gang indulging in extortion at Mumbai. It is submitted that this fact was taken into consideration by the Sessions Court, while rejecting bail and in the order dated 01.04.2024, it was specifically noted that if the accused is enlarged on bail, there is every possibility of the applicant rejoining the gang

and indulging in such activities. In this backdrop, this Court may consider issuing appropriate directions for expediting the trial and the present application may be dismissed.

7. Having heard the learned counsel for the applicant and the learned APP, this Court finds that certain facts are undeniable. It is an admitted position that the applicant has remained behind bars since 01.06.2017 i.e. a few days more than 7 years. The chargesheet was filed as far back as on 14.08.2017 and the charges were framed in the year 2019 itself. There does not appear to be any progress in the trial.

8. The material on record indicates that even in the statements made in the FIR, the applicant has not been specifically identified. The role attributed to the applicant is that of having waited outside the shop and having taken the co-accused as pillion rider away from the spot of the incident. The overt act of allegedly firing the bullet, is attributed to the co-accused person. In the statements recorded during the course of investigation, none of the witnesses have named the applicant.

9. There is no doubt that the applicant does have criminal antecedents. But, it is relevant to note that in the aforesaid order passed in Bail Application No.535 of 2023, the applicant was granted bail even in a case, wherein offences have been registered against the applicant under the provisions of Maharashtra Control of Organized Crime Act, 1999. In the said order also, this Court has taken into consideration the fact of long period of incarceration of the applicant, pending trial.

10. The Supreme Court and this Court, in a number of cases, has held that long period of incarceration, pending trial, has to be taken into consideration while disposing of bail applications. While laying down the said position of law, the Courts have repeatedly relied upon Article 21 of the Constitution of India, to grant relief to such applicants. In the present case, offences have been registered against the applicant under Sections 307, 387 and 452 of the IPC. The maximum punishment for the offence punishable under Section 307 is 10 years, particularly because in this case, there is not even an allegation that the informant had suffered any injury. The maximum punishment for the offences punishable under Sections 387 and 452 of IPC is 7 years.

11. The applicant having already undergone incarceration for more than 7 years, this Court is inclined to allow the present application, also taking note of the role attributed to the applicant even in the information provided by the informant.

12. Hence, the application is allowed in the following terms:

- (i) The applicant shall be released on bail in connection with FIR No.106 of 2017 dated 27.04.2017 registered at Hill Line Police Station, District Thane, on furnishing PR Bond of ₹ 50,000/- (Rupees Fifty Thousand only) and one or two sureties in the like amount.
- (ii) The applicant shall report to Hill Line Police Station, District Thane on first Monday of every month between 10:00 a.m. and 12:00 noon, during the pendency of the trial. The applicant shall co-operate with the trial Court and attend the proceedings regularly.
- (iii) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses and other

persons concerned with the case.

- (iv) The applicant shall inform the trial court about his contact number and residential address immediately upon release on bail and update the same in case of any change.

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

14. The application is disposed of.

(MANISH PITALE, J)

Priya Kambli