

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

CRIMINAL BAIL APPLICATION NO. 2261 OF 2024

Rahim Rafiq Siddique	...Applicant
Versus	
State Of Maharashtra	...Respondent

Mr. A. R. Bukhari for Applicant.

Mr. Avinash Naik, APP for Respondent-State.

PSI Patil, Bhiwandi Police Station is present.

CORAM	:	N. J. JAMADAR, J.
DATE	:	26th JUNE 2024

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PC.:

1. Heard.
2. The applicant, who is arraigned in Sessions Case No.216 of 2015 arising out of C.R. No. 271 of 2014 registered with Bhiwandi Taluka Police Station for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860, has preferred this application to enlarge him on bail.
3. The indictment against the applicant and co-accused is that on 3rd December 2014, the applicant and co-accused had boarded the Innova car of Prakash Kadu (the deceased), on the pretext that they were to travel to Dahisar Check Naka. Near Malji Pada. Co-accused Rahul Yadav and Shankar Kurhad made the deceased stop

the vehicle on knife-point. As the deceased resisted, the applicant and the co-accused, including a child in conflict with law, assaulted the deceased. He was taken to a secluded place towards Bhiwandi. The deceased was killed and the applicant and co-accused decamped with the car. On 5th December 2014, the body of the deceased was found by Dilip Bhoir (first informant), along Bhiwandi Parol road. The applicant and the co-accused came to be arrested in the month of December 2014.

4. Mr. Bukhari, the learned Counsel for the applicant, submits that rest of the accused including Shankar Kurhad and Rahul Yadav, have been released on bail. The applicant has been in custody for more than nine and half years. It is extremely unlikely that trial can be concluded within a reasonable period. Therefore, the applicant also deserves to be enlarged on bail. Attention of the Court was invited by an order dated 18th April 2024 passed by this Court whereby co-accused Rahul @ Pritipal Ramkishan Yadav was released on bail.

5. Mr. Avinash Naik, the learned APP, resisted the prayer for bail. It was submitted that, there is material to indicate that the applicant and co-accused were involved in other offences of an identical nature. Having regard to the gravity of the offence, the

applicant does not deserve to be released on bail. Learned APP joined the issue of long period of incarceration by canvassing a submission that since the trial is underway, the same can be expedited.

6. Evidently, the prosecution case rests on circumstantial evidence only. Prime circumstance is the disclosure statement made by the applicant and the co-accused leading to the discovery of the facts in the nature of the places of occurrence, the places where the weapon of offence and other incriminating articles were concealed, and the recovery of the weapon of offence.

7. Two discoveries are sought to be pressed into service against the applicant. First discovery dated 17th December 2014 appears to be a joint discovery made by the four accused pointing out the places where the crimes were allegedly committed. But to what extent each of the accused can be fastened with the liability for the alleged joint discovery would be a matter for adjudication at the trial. Secondly, the applicant had allegedly made a discovery on 18th December 2014 to point out the place where the weapon of offence was concealed. In the said statement, the applicant has allegedly attributed the role of assault by means of knife to co-accused Rahul Yadav.

7. While releasing the co-accused Rahul Yadav on bail, this Court had, *inter alia*, observed as under:

“6. From the perusal of the material on record, it appears that the prosecution banks on the disclosure statement made by the applicant and the co-accused leading to the discovery of the facts including the places where the offences were committed and the weapon of offence and other incriminating articles were thrown. It appears that in those disclosure statements the applicant and the co-accused have named the other accused as accomplices.

7. Evidently, the prosecution case rests on circumstantial evidence. The discovery allegedly made by the accused appears to be the prime circumstance sought to be pressed into service against the applicant and the co-accused. It is trite that a disclosure statement made by an accused is not legal evidence against non-maker co-accused.

8. Since the co-accused namely, Shankar Kurhald, Jatin Pilojpara, Akash Bansode have been released on bail, the claim that the applicant also deserves the same dispensation merits consideration. Since it is alleged that the applicant along with the co-accused allegedly boarded the car of the deceased, *prima facie*, it would be difficult to draw a distinction between the role attributed to the applicant and the co-accused, who have been released on bail.

9. The circumstance that the applicant as been arraigned in other crimes of similar nature puts the Court on guard. However, the period of incarceration of almost nine and half years, can not be lost sight of. The fact that the prosecution rests on the circumstantial evidence, makes further detention of the applicant tenuous.

10. The period of incarceration is long by any standard. Such a prolonged period of incarceration without a realistic prospect of expeditious conclusion of the trial entitles the accused to bail, even if there is a strong *prima facie* case.”

8. The aforesaid reasons apply with equal force to the claim of the applicant for bail. The period of incarceration of the applicant is even longer than that of the co-accused who have been already

released on bail. Principle of parity applies.

9. Having regard to the pace of the trial, I find substance in the submission of learned Counsel for the applicant that it is extremely unlikely that the trial can be concluded within a reasonable period. Thus, the course of a direction for expeditious trial, suggested by the learned APP, does not commend itself.

9. Hence, the following order:-

ORDER

- (i) The application stands allowed.
- (ii) The applicant be released on bail in C.R. No. 271 of 2014 registered with Bhiwandi Taluka Police Station, on furnishing a P.R. Bond of Rs.30,000/- with one or more sureties in the like amount.
- (iii) The applicant shall mark his presence at Bhiwandi Taluka Police Station on the first Monday of every month between 11 am to 1 pm for a period of three years or till conclusion of the trial, whichever is earlier.
- (iv) The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

(v) The applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

(viii) Application disposed.

(N. J. JAMADAR, J.)