

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2308 OF 2024**

Rahul Joginder Shah	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Pranay Saraf a/w. Mr. Diptendu Bose and Mr. Puneet Fonia for applicant.

Mr. Mayur S. Sonavane, APP for respondent-State.

Mr. R. N. Loke, PSI, Sakinaka Police Station, Mumbai.

**CORAM : MANISH PITALE, J.
DATE : 25th SEPTEMBER, 2024**

P.C. :

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

2. The applicant in the present case, was arrested on 17.11.2019 in connection with FIR No.911 of 2019 dated 13.11.2019 registered at Sakinaka Police Station, Mumbai for offences under Sections 302 and 201 of the Indian Penal Code, 1860 (IPC).

3. The FIR came to be registered as a dead body was found. It was that of the cousin of the applicant. During the course of investigation, the police found certain material raising suspicion about the involvement of the applicant. Eventually, he was arrested on 17.11.2019 and upon completion of investigation, chargesheet was filed in January 2020.

4. The learned counsel for the applicant submits that the case of the prosecution is based on circumstantial evidence. There are no eye-witnesses to the incident. It is submitted that the circumstances sought to be relied

upon by the prosecution, do not point towards the guilt of the applicant. It is further submitted that the applicant has suffered incarceration for about 5 years and that the charges are yet to be framed. It is submitted that since December 2022, the charges have not been framed, for the reason that the applicant was not produced before the concerned Court. In that connection, attention of this Court was invited to the order dated 01.07.2024, passed by this Court in the present application, wherein an assurance was given to the Court that the applicant would be produced before the concerned Court, so that the charges could be framed. It is submitted that despite such assurance, the proceedings before the Court have been adjourned repeatedly on the same ground. *Roznama* dated 13.09.2024 is produced to show that the applicant was not produced and that production warrants were issued.

5. Reliance is placed on the position of law recognized by the Supreme Court and this Court that when the accused undertrial has suffered incarceration for a substantial period of time, despite the fact that the undertrial is facing prosecution for serious offences, bail can be granted, when the possibility of completion of trial within a reasonable period of time is remote.

6. In that connection, attention of this Court is invited to the list of witnesses in the chargesheet, which shows that the prosecution intends to examine as many as 45 witnesses during the course of trial. It is submitted that, therefore, this Court may consider allowing the present application.

7. The learned APP submitted that there is sufficient material on merits to prove the involvement of the applicant in the brutal assault launched on the victim, which resulted in his death. It is submitted that due to the dispute

between the applicant and the victim, who was his cousin, the applicant inflicted as many as 15 stab injuries, resulting in his death. It is submitted that although there are no eye-witnesses, there is sufficient material to indicate the involvement of the applicant.

8. As regards the period of incarceration, it is submitted that the same is a matter of record and it was indicated that this Court may expedite the trial, instead of granting relief to the applicant and all efforts would be made to ensure that the directions issued by this Court are followed.

9. This Court is of the opinion that in the present case, since there are no eye-witnesses, it is a case of circumstantial evidence. The individual circumstances forming the chain, indicating the guilt of the applicant, would have to be proved by the prosecution during the course of trial. The trial would commence only after the charges are framed. In the present case, despite the chargesheet being filed as far back as in January 2020, there has been no progress before the concerned Court. The learned counsel for the applicant has invited attention of this Court to the *roznama* of the concerned Court, which shows that repeatedly the proceedings have been adjourned only on the ground that the applicant accused was not produced before the Court for framing of charges. On every occasion, production warrants were issued, but to no avail. As on today, even the charges are yet to be framed.

10. The chargesheet shows that the prosecution intends to examine as many as 45 witnesses to prove its case. Even if in practical terms, the prosecution would eventually examine fewer witnesses, it cannot be doubted that substantial number of witnesses will have to be examined. Charges are yet to be framed. There is no possibility of the trial being completed within

reasonable period of time and considering the fact that the applicant is not being produced before the concerned Court due to which, even charges could not be framed, the commencement of the trial does not appear to be possible in the foreseeable future. The applicant has undergone incarceration for almost 5 years. There are no criminal antecedents. He was 19 years old when the incident took place and as noted hereinabove, this is a case of circumstantial evidence.

11. The Supreme Court, in the case of *Union of India vs. K. A. Najeeb* [(2021) 3 SCC 713], has reiterated the power to be exercised by the Constitutional Courts to enlarge accused undertrials on bail, where they have undergone substantial periods of incarceration and the possibility of the trial being completed within reasonable period of time is remote. The said position of law has been reiterated over a period of time and even in cases concerning special statutes, where the scope to grant bail has statutory limitations, the Supreme Court has emphasized upon the right to speedy trial of the accused undertrial as a facet of Article 21 of the Constitution of India.

12. In the recent judgment in the case of *Javed Gulam Nabi Shaikh vs. State of Maharashtra and another* (2024 SCC OnLine SC 1693), the said position of law has been reiterated and it has been indicated that merely because the accused undertrial is facing prosecution for serious offence, cannot be a ground to deny bail. In such circumstances, where such undertrial has undergone substantial period of incarceration, the said position of law has been repeatedly followed by this Court and in the facts and circumstances of the present case, the applicant has indeed made out a strong *prima facie* case for grant of bail in his favour.

13. 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.911 of 2019 dated 13.11.2019 registered at Sakinaka Police Station, Mumbai, 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, upon being released on bail, shall report to Sakinaka Police Station on first Monday of each 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;
 - (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.
14. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions are violated.
15. 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.
16. The application is disposed of.

(MANISH PITALE, J)