

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2311 OF 2024

Shahrukh @ Papyra Rashid Shaikh	...Applicant
<i>Versus</i>	
The State of Maharashtra	...Respondent

Mr. Nitin Gaware Patil, Advocate, for the Applicant.
 Mr. Ashok Gawai, APP, for the Respondent-State.

CORAM: MADHAV J. JAMDAR, J.
DATED : 16th JANUARY 2025

PC:-

1. Heard Mr. Nitin Gaware Patil, learned Counsel appointed by the High Court Legal Services Committee to represent the Applicant and Mr. Ashok Gawai, learned APP for the Respondent-State.
2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*.
3. Mr. Nitin Gaware Patil, learned Counsel tenders a chart giving the relevant particulars. The said chart reads as under:

1.	C. R/F.I.R. NO.	438 of 2014
2.	Date of offence/Incident	18.10.2014

3.	Date of Registration of FIR	18.10.2014
4.	Name of Police Station	Hinjewadi Police Station, Pune
5.	Section/s invoked	302, 120-B r/w. 34 of IPC, 3, 25 of Arms Act, 125 of Bombay Police Act
6.	Total No. of Accused, names and age	1. Sachin Sudam Kudale 2. Shahrukh @ Papya Rashid Shaikh 3. Gautam Shriram More 4. Mohan @ Babu Janardan Mujmule 5. Prakash Anna Dongare 6. Visal Tanaji Kudale
7.	Total No. of victims, names and age (Except where non-disclosure requirement)	1. Rajesh Sakharam Darshale
8.	Date of Arrest of Applicant	01.11.2024
9.	Applicant's alleged role	- First Informant Mr. Sanjay Dagadu Darshale along with his cousin brother Rajesh Sakharam Darshale was chitchatting in front of site office of '41 Estera' a housing construction project near his house at village Poonavale Malwadi, Taluka-Mulshi, District-Pune at about 8.00 p.m. by sitting on chairs. At that time, witness Baliram Bhaskar Rokade, Watchman at that site was present at gate of that site. - Thereafter, two

		unknown youngsters i.e. applicant and Prakash Dongare approached them and demanded drinking water. Therefore, victim Rajesh Darshale asked witness Rokade to bring drinking water from his house adjacent to that construction site. • Thereafter, witness Rokade went to fetch water. In the meantime, the applicant and Dongare asked victim and First Informant Road for going to village Pachane-Pusane and accordingly they shown them direction. Thereafter, immediately both co-accused fired shots from their Pistols on victim resulting into he fell down and died. • Thereafter, both co-accused went out of gate and at the same time one motorcycle which was being driven by the present applicant-accused came there to take both co-accused and stopped and co-accused Shaikh and Dongare sat thereon and escaped from that spot.”
10.	Date of filing of	23.10.2015

	Chargesheet	
11.	Nature of Evidence (Circumstantial/direct)	Direct
12.	Number of eye-witness, if any	1
13.	Details of recovery at the Applicant's instance, if any	1 Country made pistol
14.	Details of antecedents of Applicant, if any	-
15.	Status of other case wherein Applicant is an accused, if any	-
16.	Stage and details of trial	-
17.	Main grounds seeking bail	1. The Applicant is not named in FIR. 2. Applicant is behind bar since 01.11.2014 (10 years 2 months) 3. According to the ballistic report the recovery of country made pistol and the bullet which was found from the body of the deceased do not tally with that bullet and has been fired from another different firearm. 4. TI Parade has not been conducted in lawful manner, only one panch was present during the TI parade. 5. All of the accused has been granted bail. 6. There is delay in trial.
18.	Details of bail granted to other Accused under same C.R./F.I.R., if any (Case No., Date, Coram)	1. Bail granted to accused No.3 vide order dated 27.02.2015 passed by the Ld. Sessions Judge in Bail Application No.478 of 2015

		2. Bail granted to accused No.4 vide order dated 01.03.2024 by Hon'ble High Court in BA/2558/2023. 3. Bail granted to accused No.5 vide order dated 14.12.2024 by Hon'ble High Court in BA/2522/2023. 4. Bail granted to Accused No.6 vide order 23.01.2015 passed by the Ld. Sessions Judge in Bail Application No.166 of 2015.
19.	Details, in case of parity	N/a
20.	Details of Order/s passed (Case No., Date, Coram) in earlier Bail Application/s fled by the Applicant which have already been decided.	-
21.	Details of any pending Bail Application/s preferred by Applicant in any Court	N/a

4. Mr. Nitin Gaware Patil, learned Counsel submits that the Applicant is incarcerated since 1st November 2014 i.e. for more than 10 years and 2 months. He submits that there are total six accused and out of the same four accused have been enlarged on bail. He further submits that trial is not yet completed. He submits that Roznama dated 9th January 2025 of the Sessions Case shows that total 39 witnesses have been examined earlier and trial is not

yet concluded. He therefore, submits that the Applicant is entitled to be released on bail due to long incarceration. Apart from the orders granting bail to other accused, he relied on the order of the learned Single Judge (Coram: Revati Mohite Dere, J.) dated 14th December 2024 passed in Criminal Bail Application No.2522 of 2023 granting bail to co-accused. He relied on the decision of the Supreme Court in the case of **Manish Sisodia vs. Directorate of Enforcement**¹.

5. On the other hand, Mr. Gawai, learned APP appearing for the Respondent-State strongly opposed the Bail Application. He submits that only 7 more witnesses have remained to be examined. Out of the same 3 witnesses are concerning investigating machinery. He therefore, submits that trial will be concluded within short time.

6. However, perusal of the record shows that the incident in question took place on 18th October 2024. The F.I.R. has been lodged on 18th October 2014. The Applicant was arrested on 1st November 2014. The charge-sheet has been filed on 23rd October

1 2024 SCC OnLine SC 1920

2015 and till date, the trial is not concluded. Although only 7 witnesses have remained to be examined, the same will also take some time.

7. In this behalf, it is relevant to note the observations of the learned Single Judge (Coram: Revati Mohite Dere, J.) in the order dated 14th December 2024 passed in Criminal Bail Application No.2522 of 2023 concerning co-accused, which reads as under:

“5 Perused the papers. The applicant’s first bail application was rejected on merits vide order dated 26th April 2017, having regard to the role played by the applicant. It is not in dispute that the applicant is in custody for more than 10 years, the applicant having been arrested on 2nd November 2014. Till date, the prosecution has examined more than 30 witnesses. It is not in dispute that the two eye-witnesses in the case, have been examined. It appears that 2 to 3 witnesses are yet left to be examined. Thereafter, the 313 statements of the accused will have to be recorded after which, arguments will be heard and thereafter, the learned Judge would deliver the judgment. The same is likely to take some time.

6 Considering the long incarceration of the applicant i.e. for more than 10 years and having regard to the judgments of the Apex Court, the application is allowed on the following terms:”

(Emphasis added)

8. Thus, the prosecution made statement in said Criminal Bail Application No.2522 of 2023 that only 2-3 witnesses have remained to be examined and now the statement is made to the effect that about 7 witnesses will be examined further.

9. The Supreme Court in the decision of *Manish Sisodia* (supra) considered the fundamental right of an Accused to have a speedy trial as enshrined under Article 21 of the Constitution of India and reiterated the position in the earlier decisions. The relevant Paragraphs are Paragraph Nos.51 and 52, which read as under:

“51. Recently, this Court had an occasion to consider an application for bail in the case of Javed Gulam Nabi Shaikh v. State of Maharashtra² wherein the accused was prosecuted under the provisions of the Unlawful Activities (Prevention) Act, 1967. This Court surveyed the entire law right from the judgment of this Court in the cases of Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh³, Shri Gurbaksh Singh Sibbia v. State of Punjab⁴, Hussainara Khatoon (I) v. Home Secretary, State of Bihar⁵, Union of India v. K.A. Najeeb⁶ and Satender Kumar Antil v. Central Bureau of

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- 2** 2024 SCC OnLine SC 1693
3 (1978) 1 SCC 240 : 1977 INSC 232
4 (1980) 2 SCC 565 : 1980 INSC 68
5 (1980) 1 SCC 81 : 1979 INSC 34
6 (2021) 3 SCC 713 : 2021 INSC 50

*Investigation*⁷. The Court observed thus:

“19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

52. The Court also reproduced the observations made in *Gudikanti Narasimhulu (supra)*, which read thus:

“10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in Gudikanti Narasimhulu v. Public Prosecutor, High Court reported in (1978) 1 SCC 240. We quote:

“What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox]:

“I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that **bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial.**””

(Emphasis added)

10. Speedy trial is one of the facets of right to life and liberty

7 (2022) 10 SCC 51 : 2022 INSC 690

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.⁸ Therefore, the Applicant is entitled for bail. If the Applicant’s detention continues, it will amount to an infringement of his fundamental right under Article 21 of the Constitution of India of speedy trial.

11. Accordingly, the Applicant is entitled to be released on bail by imposing following certain conditions:

ORDER

- i. The Applicant-Shahrukh @ Papya Rashid Shaikh be released on bail in connection with C.R. No.438 of 2014 registered with the Hinjewadi Police Station, District -Pune on his furnishing P. R. Bond of Rs.10,000/- with one or two local sureties in the like amount;

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

- ii. The applicant shall not enter the jurisdiction of Hinjewadi Police Station, Pune, till the conclusion of the trial.
- iii. The applicant shall attend the nearest Police Station (where he intends to reside), on the 2nd and 4th Saturday of every month between 10:00 a.m. to 12:00 noon, till the conclusion of the trial;
- iv. The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- v. The applicant to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted, so that, the trial is not disrupted;
- vi. The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

vii. The applicant shall file an undertaking with regard to clauses (ii) to (vi) in the trial Court, within one week of his release;

viii. If there are two consecutive defaults either in attending the Police Station or if the applicant fails to appear before the trial Court, or there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

12. The Bail Application is disposed of accordingly.

13. It is clarified that the Trial Court shall decide the case on its merits and uninfluenced by the *prima facie* observations made in this order.

14. This Court places on record the appreciation of the assistance rendered by Mr. Nitin Gaware Patil, learned Counsel appointed by the High Court Legal Services Committee to represent the Applicant.

[MADHAV J. JAMDAR, J.]

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