

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

CRIMINAL BAIL APPLICATION NO. 2516 OF 2024

Mohammad Jenif Hanif Ansari ...Applicant

Vs.

The State of Maharashtra ...Respondent

Mr. Milan Desai, for the applicant.

Mr. S. M. Mangaonkar, APP for State-Respondent.

Mr. Shingare Avadhut Mahadev, PSI, Present.

CORAM:- ANIL S. KILOR, J.

DATED:- 9th AUGUST, 2024

PC:-

1) Heard.

2) By this application under Section 439 of the Code of Criminal Procedure, the applicant is seeking bail in Crime No. 211 of 2018 registered with Diggi Police Station, Dist. Pune, for the offences punishable under Sections 302, 403 and 201 read with Section 34 of the Indian Penal Code, 1860.

3) The applicant is in jail from last six years and until now only one witness has been examined. There are total 44 witnesses. However, the Investigating Officer is present in the Court and informs that the prosecution would examine only 20 witnesses.

4) From the record, it is evident that chief of the first witness was recorded on 28th June, 2024 and then the matter was posted for cross-examination on 22nd July, 2022. On the said date since the accused was not produced, the cross was not conducted. Now, the next date is 12th August, 2024.

5) From the above referred three dates, one can say that with the same pace for examining 20 witnesses it will take couple of years.

6) After going through the charge-sheet and the material collected by the Investigating Officer during the investigation, it is evident that the case is based on circumstantial evidence. The circumstance against the applicant is that he was seen withdrawing the amount from the account of the deceased.

7) Moreover, while opposing the present application, the learned APP has pointed out that the applicant has shown the place of incidence and also clothes and knife were recovered from the applicant. However, there is no direct evidence and even as far as the applicant is concerned, there is no motive pointed out by the learned APP which is against the accused No. 1 who is juvenile.

8) The Hon'ble Supreme Court of India in the case of *Sheikh Javed Iqbal @ Ashfaq Ansari @ javed Ansari vs. State of Uttar Pradesh*)¹, has observed thus:

“23. This Bench in a recent decision dated 03.07.2024 in Javed Gulam Nabi Shaikh Vs. State of Maharashtra, Criminal Appeal No. 2787 of 2024, has

held that howsoever serious a crime may be, an accused has the right to speedy trial under the Constitution of India. That was also a case where fake counterfeit Indian currency notes were seized from the accused-appellant. He was investigated by the National Investigating Agency (NIA) under the National Investigating Agency Act, 2008 and was charged under the UAP Act alongwith Sections 489B and 489C IPC. He was in custody as an undertrial prisoner for more than four years. The trial court had not even framed the charges. It was in that context, this Court observed as under:

9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

23.1. After referring to various other decisions, this Court further observed as follows:

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.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.

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26. Angela Harish Sontakke Vs. State of Maharashtra is a case where the accused-appellant was charged under various provisions of the UAP Act as well as under the IPC. He sought for bail. This Court observed that, undoubtedly, the charges are serious but the seriousness of the charges will have to be balanced with certain other facts like the period of custody suffered and the likely period within which the trial can be expected to be completed. In that case, it was found that the appellant-accused was in custody since April, 2011 i.e. for over five years. The trial was yet to commence. A large number of witnesses were proposed to be examined. It was in that context that

the appellant-accused was directed to be released on bail.

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30.1. Thereafter, this Court held as follows:

7.1. We are dealing with a case of the accused whose guilt is yet to be established. So long as he is not held guilty, the presumption of innocence is applicable. He cannot be deprived of all his rights guaranteed under Article 21.....

9) In view of the above referred observations of the Hon'ble Supreme Court of India and considering the fact that there is unlikelihood of conclusion of trial within a reasonable period or in near future and since I am of the opinion that the further custody of the applicant is not necessary, I pass the following order.

ORDER

- i. The Bail Application is allowed;
- ii. It is directed that the Applicant shall be released on bail in Crime No. 211 of 2018 registered with Diggi Police Station, Dist. Pune, for the offences punishable under Sections 302, 403

and 201 read with Section 34 of the Indian Penal Code, 1860, on furnishing PR. Bond of Rs.25,000/- (Rupees Twenty Five Thousand) with one solvent surety in the like amount;

iii The applicant is permitted to furnish provisional cash bail in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) for six weeks in lieu of sureties;

iv. The applicant shall attend the said Police Station on 1st day of every month between 10.00 am to 12.00 noon., till the conclusion of the trial except on the date of trial;

v. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;

vi. Liberty is granted to the State to apply cancellation of bail if the applicant commits similar offence.;

vii. The Applicant shall attend the trial before the Trial Court regularly on every date unless exempted by the Trial Court for any reason.

viii. Application stands disposed of, accordingly.

[ANIL S. KILOR, J.]