

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

CRIMINAL BAIL APPLICATION NO.2937 OF 2024

Prithviraj Rajendra Suryawanshi	 Applicant
versus	
The State of Maharashtra	 Respondent

**WITH
CRIMINAL BAIL APPLICATION NO.2939 OF 2024**

Akshay Machhindra Hake	 Applicant
versus	
The State of Maharashtra	 Respondent

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- Mr. Shailesh Chavan a/w Mr.Nagesh Khedkar a/w Mr.Prithviraj Deshmukh, Advocate for Applicant in BA/2937/2024.
- Mr. Nagesh Khedkar a/w Prithviraj Deshmukh a/w Abhijeet Mhaske, Advocate for Applicant in BA/2939/2024.
- Mr. Vinit A. Kulkarni, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 04th OCTOBER, 2024

P.C. :

1. Heard Mr. Shailesh Chavan and Mr. Nagesh Khedkar learned counsel for the Applicants and Mr. Vinit A. Kulkarni, learned APP for the State.

2. Both these applications are decided by this common order because they arise out of the same registered offence and

the same investigation. For the sake of convenience, both the Applicants are referred to by their names.

3. The Applicant Akshay had earlier approached this Court vide Criminal Bail Application No.1472 of 2020. The said Bail Application was rejected by a reasoned order passed on 03/02/2022 by a co-ordinate bench (Coram : C. V. Bhadang, J.). The Applicant then preferred Criminal Bail Application No.1043 of 2024. At that time, since the trial was already made time bound, the learned counsel for the Applicant did not press that application and he had sought liberty to approach this Court again for his release on bail if the trial was not concluded within four months from 07/03/2024. That liberty was granted to the Applicant Akshay. As of today, more than 4 months have passed from 07/03/2024. Far from the conclusion, the trial has progressed at a snail speed and only four witnesses are examined as of today and the prosecuting agency intends to examine around 35 to 40 witnesses. The Applicant Akshay is in custody since 05/02/2018.

4. The Applicant Prithviraj was arrested on 23/02/2018 and since then he is in custody. He had also approached this Court for his release on bail previously vide Criminal Bail Application No.3542 of 2021. That application was rejected by a reasoned order by another bench (Coram : Smt. Anuja Prabhudessai, J.) vide the order dated 22/11/2022. Since then, as mentioned earlier, the trial has not progressed much. The Applicants continue to be in custody and therefore he has also filed this present Bail Application.

5. The main contention of both the learned counsel for the Applicants is about their long incarceration affecting their right under Article 21 of the Constitution of India. They made submissions only on that aspect. They did not make any submissions on the merits of the matter.

6. Before considering the ground of delayed trial, the facts of the case can be mentioned in brief as under;

The incident took place on 28/01/2018 at about 02.15 p.m. at Hadapsar, Pune. About 3 to 4 accused with the help of

heavy and sharp iron weapons assaulted one Sujit and committed his murder. All of them then went away on their two wheelers. The police officer reached the spot and the FIR was lodged by PSI Umakant Vajinath at Hadapsar police station, vide C.R.No.112/2018, u/s 302 of the Indian Penal Code. The investigation was carried out. The Applicants and others were arrested. The post-mortem notes show that there were 52 incised wounds on the deceased. The charge-sheet was filed and since then the trial has hardly progressed.

7. As far as the merits of the matter and the evidence against the Applicants in the charge-sheet are concerned, there is sufficiently strong material against the Applicants. One Balaji Bansode was one of the witnesses. He had described the incident. According to him, the Applicant Prithviraj had held the deceased and the Applicant Akshay and 3 to 4 other accused were giving blows with sharp weapons on the deceased. There are statements of the police officers Prasad Lonare and Rahul Ghuge, who had examined the CCTV footage. Rahul Ghuge has stated in his statement that both these Applicants were seen

giving blows to the deceased. Prasad Lonare has stated that the Applicant Akshay was seen giving blows on the deceased. Thus there is sufficiently strong material against the Applicants. The incident is captured on CCTV and they are seen in the incident. The affidavit filed on behalf of the investigating agency mentions that the deceased Sujit was murdered because he had assaulted one Abhijit Bhosale prior to this incident and the Applicants' group wanted to create terror in the locality. Therefore, it is without doubt that the offence is serious and there is sufficiently strong incriminating material against the Applicant.

8. Having observed this, the crucial question still remains that the Applicants are in custody since more than 6 years and 8 months and the trial is proceeding very slowly. On the past two occasions, this Court had made the trial time bound. In spite of that, no effective steps were taken. The affidavit-in-reply tendered by the learned APP tries to justify the delay in trial. But mainly it is in the nature of the description of the Roznama. No sufficient reasons are given as to why the trial could not be concluded as directed by this Court within a time bound frame.

9. In this situation, I had called for the report from the learned Trial Judge. He had sent a report dated 25/09/2024. The trial was made time bound for the first time on 31/08/2023 and then further 4 months' extension was granted on 07/03/2024. The learned Trial Judge has explained about the progress in the trial from June 2024, when he took charge of that particular Court. No explanation is forthcoming for the period between August 2023 to June 2024. The tenor of the report mentions that the prosecution witnesses No.3 API Prasad Lonare frequently remained absent on one or the other ground. Ultimately, his evidence, which was quite bulky, was completed only on 23/09/2024. The learned Judge gave sufficient time in the first session on every date for recording his evidence. It is mentioned that every time short adjournments were given, but either the witnesses remained absent or the advocate for the accused remained absent.

10. From this explanation and the copy of Roznama produced by the learned counsel for the Applicants shows that

the trial could not be proceeded with a reasonable speed mainly because the prosecution witnesses did not cooperate with the early disposal of the trial and they were not present on every date.

11. The learned Judge then explained as to how huge number of cases are assigned to him. He has also added that he himself had suffered two massive heart attacks in October 2020. From this explanation at least from June 2024, no fault can be found with the learned Judge. But it is quite clear that the trial is delayed mainly because of the inaction on the part of the prosecuting agency to bring the witnesses regularly before the Court. With the result, the trial is progressing very slowly and as of today only 4 witnesses are examined. As mentioned earlier by the learned APP, they propose to examine at least 35 witnesses. Therefore, it is more than clear that the trial is not likely to get over in a reasonably near future. In this context, a reference can be made to the two orders passed by the Hon'ble Supreme Court, as follows :

- (1) The order passed in the case of ***Balwinder Singh Vs. State of Punjab***, dated 09/09/2024 in ***Petition for Special Leave to Appeal (Crl). No.8523/2024***.

The Hon'ble Supreme Court has observed that the accused has a right to a fair trial and while a hurried trial is frowned upon as it may not give sufficient time to prepare for the defence, an inordinate delay in conclusion of the trial would infringe the right of an accused guaranteed under Article 21 of the Constitution.

In that case the Hon'ble Supreme Court considered the prayer for bail of an accused who had a direct role in shooting the victim. The trial had commenced and 21 prosecution witnesses were examined. The prosecution intended to examine 17 more witnesses. In that situation, the Hon'ble Supreme Court granted bail to that accused. It was further observed that the trial process itself was a punishment particularly when there was presumption of innocence under the Indian jurisprudence.

- (2) Similar view was taken by the Hon'ble Supreme Court in the case of ***Javed Gulab Nabi Shaikh Vs. State of Maharashtra and another, in Criminal Appeal No.2787 of 2024***.

It was observed in that case that if the State or any prosecuting agency including the Court concerned has no wherewithal to 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.

12. Considering these observations and the background in which the trial is delayed and since the Applicants are in custody since February 2018, they are required to be released on bail.

13. Hence, the following order :

ORDER

- (i) In connection with C.R.No.112/2018, dated 28/01/2018, registered with Hadapsar Police Station, Pune, the Applicants are directed to be released on bail on their furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) each, with one or two sureties each, in the like amount.

- (ii) The Applicants shall attend the concerned Police Station on every Sunday between 04.00 p.m. to 06.00 p.m. till conclusion of the trial.
- (iii) The Applicants shall attend all the dates in the Trial Court unless exempted by the learned Trial Judge.
- (iv) The Applicants shall cooperate with the expeditious disposal of the trial.
- (v) The Applicants shall not tamper with the evidence. They shall not threaten any witnesses.
- (vi) The copy of this order be sent to the Commissioner of Police, Pune City and the Director of Prosecution, State of Maharashtra for taking effective steps, so that this situation does not arise in serious cases.
- (vii) The applications are disposed of.

(SARANG V. KOTWAL, J.)