

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3420 OF 2024

Nitin Janardhan Ovhal ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. S.S. Sawalkar, for the Applicant.

Mr. H.J. Dedhia, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.

DATE : OCTOBER 10, 2024

P.C.:

1. The applicant who is arraigned in C.R. No. 324 of 2014 registered with Kalyan Taluka police station for an offence punishable under section 302 of Indian Penal Code, 1860 (the Penal Code), has preferred this application for bail.

2. Jyotsna Ovhal (the deceased) was the sister of the first informant and wife of the applicant. The applicant and the deceased were blessed with a son, who was four years of age at the time of alleged occurrence. The marital life of the applicant and the deceased was, however, afflicted with discord. Thus, the deceased was residing separately, from the applicant.

3. On 10th December, 2014, at about 8.30 pm, there was a quarrel between the deceased and the applicant at R.S. Ground, Galegaon. During the course of altercation, the applicant allegedly whipped out a knife and unleashed blows on the deceased. Upon being

informed, the first informant rushed to the said spot. The first informant found the deceased lying in a pool of blood. The son of the deceased and the applicant informed the first informant that the applicant assaulted the deceased.

4. In fact, this is the second application for bail. First BA No. 949 of 2024 came to be dismissed as withdrawn on 7th March, 2024. The Court was then informed that the applicant was released on bail on medical ground and he did not surrender and was, therefore, required to be arrested. The Court was also informed that five witnesses had been examined and the prosecution proposed to examine ten more witnesses. Thereupon the applicant sought leave to withdraw the application. However, having regard to the period of incarceration, the learned Additional Session Judge seized with the Session Case No. 107 of 2015 was requested to make an endeavour to conclude the trial as expeditiously as possible and, preferably, within a period of four months.

5. Mr. Sawalkar, learned counsel for the applicant submitted that there has not been any progress in the trial since the withdrawal of the first application. The learned counsel tendered a copy of Roznama for the perusal of the Court. It appears that during the period commencing from March, 2024 to August, 2024 there was no progress in the trial. Witnesses were absent. On 17th August,

2024 deposition of PW. 7 Kripashankar Yadav came to be recorded.

6. The applicant was initially arrested on 22nd December, 2014. He was released on bail on medical ground on 10th November, 2017. It appears, the applicant did not surrender and was eventually arrested on 23rd November, 2020. The applicant has been in custody for more than six years and nine months. In the backdrop of the aforesaid period of incarceration, the Court considered it appropriate to entertain prayer for bail despite withdrawal of the first application for bail.

7. I have perused the report under section 173 of the Code and the documents annexed with it. The postmortem report indicates that the cause of death was “Haemorrhagic shock due to penetrating injury to heart and internal haemorrhagic”. There were incised wounds on the chest, abdomen and axilla. Prima facie, there is material to show that the deceased met a homicidal death.

8. Evidently, the first informant is not an eye witness to the occurrence. Three witnesses, who have been cited as eye witnesses, have stated that there was a quarrel between a couple, and suddenly the man whipped out a knife and assaulted the lady. Prima facie, it does not appear that any of the eye witnesses had known the applicant from before. Though the presence of the then four year old son of the deceased and the applicant at the time and place

of occurrence, appears natural, yet the testimony of the child will have to pass the muster at the trial.

9. Aforesaid being the nature of the evidence, on the strength of which the prosecution proposes to bring home the charge to the applicant, the aspect of prolonged incarceration deserves to be taken into account. The applicant has been in custody for six years and nine months. As noted above, there has not been a substantial progress in the trial despite a direction for expeditious conclusion of the trial. Having regard to the pace at which the trial has progressed, it is extremely unlikely that the trial can be concluded within a reasonable period.

10. As material witnesses appeared to have been examined, at this stage, the possibility of tampering with evidence appears remote. It is true that the fact that the applicant had not surrendered puts the Court on guard. However, the prolonged period of incarceration without a real prospect of conclusion of trial in a reasonable period impinges upon the right of the applicant to have a speedy trial. The apprehension on the part of the prosecution can be taken care of by imposing stringent conditions.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant Nitin Janardhan Ovhal be released on bail in C.R. No. 324 of 2014 registered with Kalyan Taluka police station, on furnishing a P.R. Bond of Rs. 50,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at Kalyan Taluka police station on the first Monday of every month between 11 am to 1 pm till conclusion of the trial.
- 4] 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.
- 5] 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.
- 6] The applicant shall regularly attend the proceedings before the jurisdictional Court.
- 7] 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.

Application disposed.

(N. J. JAMADAR, J.)