

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3427 OF 2024**

Ganesh Balraj Sunke	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Amit Singh for applicant.

Mr. Kiran C. Shinde, APP for respondent-State.

Mr. Balasaheb Bapurao Gavhane, PSI, Hill Line Police Station, District Thane.

**CORAM : MANISH PITALE, J.
DATE : 05th DECEMBER, 2024**

P.C. :

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

2. This is the second bail application of the applicant. The first bail application bearing No.1091 of 2021, was disposed of on 03.11.2023 as having been withdrawn. This Court (Coram: G. A. Sanap, J) took note of the fact that the charges had been framed in May 2022. But, the prosecution had not examined even a single witness. In that light, liberty was reserved for the applicant to file a fresh application after 6 months, if there were no substantial progress in the case.

3. The learned counsel for the applicant submitted that more than 1 year has gone by and even today, only first prosecution witness is in the box. It is submitted that there is no substantial progress in the trial and therefore, the present application has been filed. It is indicated that this is a case of circumstantial evidence and the applicant has already suffered incarceration

for a period of more than 6 years and 2 months. It is submitted that there is no likelihood of the trial being completed within reasonable period of time and therefore, this Court may allow the application.

4. On the other hand, the learned APP submitted that even if substantial period of incarceration is indeed suffered by the applicant, in terms of the observations made by the Supreme Court in the case of *X vs. State of Rajasthan and another* [order dated 24.11.2024 in SLP (Criminal) No.13378 of 2024], to the effect that ordinarily, in serious offences like rape and murder, once the trial commences and the prosecution starts examining its witnesses, the Courts would be slow in entertaining applications for grant of bail, this application may not be entertained. It is submitted that the trial could be expedited.

5. The present case is a case of circumstantial evidence and it is asserted on the part of the prosecution that there is sufficient material to show that the applicant was last seen together with the deceased (victim) and therefore, a strong *prima facie* case exists against the applicant.

6. This Court is not going into the merits of the matter, except for taking note of the fact that the present case is indeed a case of circumstantial evidence and there is no eye-witness to the incident. But a perusal of the order dated 03.11.2023, passed by this Court shows that liberty was reserved for the applicant to file fresh bail application, if there was no substantial progress in the trial.

7. On 03.11.2023, the stage of trial was that only charges had been framed and not a single prosecution witness had been examined. As on

today, after more than an year has elapsed, the only progress in the trial is that the first prosecution witness is in the witness box and his cross-examination is yet to be undertaken. This indicates that there is indeed no substantial progress in the trial. The FIR, in the present case, was registered on 11.09.2018 and the applicant was arrested on the same day. Charges were framed as far back as on 27.05.2022 and yet, as on today, only the first witness is in the witness box, while the prosecution intends to examine as many as 47 witnesses. At this rate, there is hardly any possibility of the trial being completed within reasonable period of time.

8. The Supreme Court, in its judgments in the cases of *Union of India vs. K. A. Najeeb* [(2021) 3 SCC 713], *Satender Kumar Antil vs. Central Bureau of Investigation* [(2022) 10 SCC 51], followed by recent judgment in the case of *Javed Gulam Nabi Shaikh vs. State of Maharashtra and another* (2024 SCC OnLine SC 1693), has held that where the accused undertrial has suffered long period of incarceration and there is remote possibility of the trial being completed within reasonable period of time, the Constitutional Courts ought to exercise their power to release such accused undertrials on bail. It is indicated that the seriousness of offences cannot be a ground for denying bail in such circumstances. It is further indicated that even in cases under special statutes, which require the accused undertrial to satisfy a higher threshold for seeking bail, the Constitutional Courts ought to exercise such power.

9. In the order of the Supreme Court in the case of **X vs. State of Rajasthan and another** (*supra*), on which the learned APP has placed reliance, what is indicated is a general principle that once the trial commences and the prosecution starts examining its witnesses in cases

involving serious offences, the Court should be slow in entertaining the bail application. But this still does not dilute the position of law laid down and reiterated recently by the Supreme Court that in the face of the accused undertrials having been incarcerated for a long period of time and the trial moving at snail's pace, the Constitutional Courts can certainly exercise their power in the context of such accused undertrials.

10. In the present case, the applicant having suffered incarceration for a period of more than 6 years and 2 months, this being a case of circumstantial evidence and there being no criminal antecedents of the applicant, this Court is inclined to allow the application, subject to imposing appropriate conditions.

11. 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.I-219 of 2018 dated 11.09.2018, registered at Hill Line Police Station, District Thane, on furnishing PR Bond of ₹ 50,000/- 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 Hill Line Police Station, District Thane 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, for the reasons to be recorded on writing.

(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.

12. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions is violated.

13. 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.

14. The application is disposed of.

(MANISH PITALE, J)

Priya Kambli