

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.3667 OF 2024

Nikhil Satish Theurkar	...Applicant
<i>Versus</i>	
The State of Maharashtra	...Respondent

Mr. Salman Pathan a/w. Mr. Ishraq Shaikh, Advocates, for the Applicant.

Mrs. R. V. Newton, APP, for the Respondent-State.

Mr. Avinash C. Thorat, PSI, Ranjangaon Police Station, Pune, present.

CORAM: MADHAV J. JAMDAR, J.

DATED : 26th SEPTEMBER 2024

PC:-

1. Heard Mr. Pathan, learned Counsel appearing for the Applicant and Ms. Newton, learned APP appearing for the Respondent-State.

2. This second Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1.	C. R. No.	201 of 2022
2.	Date of registration of F.I.R.	06/05/2022
3.	Name of Police Station	Ranjangao MIDC, Pune

4.	Section/s invoked	302 of the Indian Penal Code, 1860.
5.	Date of incident	05/05/2022
6.	Date of arrest	06/05/2022
7.	Date of filing of Charge-sheet	02/08/2022

3. The present Applicant has filed Application below Exhibit-4 in Sessions Case No.71 of 2023 and the said Application was rejected by order dated 4th March 2023 passed by the learned Additional Sessions Judge, Pune. Thereafter, the present Applicant has filed Bail Application No.1489 of 2023 in this Court and this Court by order dated 8th January 2024 allowed the withdrawal of the Bail Application with liberty to file second Bail Application before the learned Trial Court, if trial is not concluded within a reasonable time.

4. Mr. Pathan, learned Counsel appearing for the Applicant states that on 11th June 2024, the Applicant filed Application bearing Exhibit-11 in Sessions Case No.71 of 2023 seeking bail as there is no progress in the trial and even the charge is also not framed. The said Bail Application has been rejected by order dated

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14th August 2024 passed by the learned Additional Sessions Judge, Pune. Therefore, this second Bail Application is filed in this Court.

5. In paragraph No.3 of order dated 4th March 2023 passed by the learned Additional Sessions Judge, Pune prosecution case is set out. The said paragraph No.3 reads as under:

“3] It is the prosecution case that, one Utkarsha Jalindar Dhere was the friend of accused. Accused had enmity with one Ganesh Dattatraya Rode. The accused was planning to hatch the conspiracy to eliminate Ganesh Dattatraya Rode. As a part of conspiracy, he made a phone call to Utkarsha Dhere and disclosed his intention and planning to commit the murder of Ganesh Rode. He talk on phone that other persons are helping the accused to commit the murder of Ganesh Rode. The accused also requested Utkarsha Dhere to help him to commit the murder of Ganesh Gode. Utkarsha Dhere has recorded the conversation between him and the accused on a phone and forwarded the said conversation to one Shubham Devkar for forwarding it to the Ganesh Rode. Shubham Devkar is the relative of Ganesh Rode. When the accused came to know that the Utkarsha Dhere has recorded the conversation between them and forwarded it to the Ganesh Roade, the accused gave threat to commit the murder of Utkarsha Dhere. With this intention the accused on 05/05/2022 at about 21.30 hours came in front of the house of Utkarsha Dhere having Koyata (sickle) in his hand. In front of the house of Utkarsha Dhere on platforms/ Oatha Jalindhar Dhere (the father of Utkarsha Dhere) was slept. There was a darkness on the platforms/oatha. The accused thought that, Utkarsha Dhere is sleeping on

the Oatha/platform and he made assault on the neck, left shoulder, chest and back of the Jalindhar Dhere and committed his murder.”

6. Mr. Pathan, learned Counsel appearing for the Applicant submitted that this is a second Bail Application as the first Bail Application was withdrawn with liberty to file a fresh Bail Application, if the trial is not concluded within a reasonable time. Therefore, present Bail Application is filed. He submitted that when the incident in question occurred, the Applicant was aged 19 years. Now the Applicant is aged 21 years. There are no criminal antecedents against the Applicant. He submitted that the trial is not yet commenced and even the charge is also not framed. He further submitted that C.A. reports are still not received and therefore, there is no likelihood of conclusion of trial in near future.

7. On the other hand, Ms. Newton, learned APP for the Respondent-State strongly opposed the Bail Application. She pointed out affidavit-in-reply dated 25th September 2024 of Mr. Mahadev Narayan Waghmode, Police Inspector, presently attached to Ranjangaon MIDC Police Station, Pune Rural Police, Pune. She also pointed out statement of Utkarsh Jalindar Dhere dated 7th May

2022 (Pages 159 to 160) of the said affidavit-in-reply. She therefore, submitted that although there is no eye-witness to the incident there are incriminating circumstances against the Applicant and therefore, the Bail Application be rejected.

8. At the outset, it is required to be noted that the earlier Bail Application has been allowed to be withdrawn and dismissed as withdrawn and therefore, it is clear that as the Court was not inclined to grant bail on merits, the Bail Application was withdrawn. However, liberty was granted by order dated 8th January 2024 to file second Bail Application before the learned Trial Court, if trial is not concluded within a reasonable time.

9. Accordingly, second Bail Application was filed before the learned Trial Court on 11th June 2024. By order dated 14th August 2024, learned Additional Sessions Judge rejected the second Bail Application of the Applicant. However, it is required to be noted that in the said order it is specifically mentioned that as there was telephonic communication, voice sample of the Applicant was taken and it was sent to C.A. for voice analysis and the said report is awaited.

10. Perusal of the record shows that in the present case, the incident in question occurred on 5th May 2022, F.I.R. was lodged on 6th May 2022, the Applicant was arrested on 6th May 2022 and, Charge-sheet was filed on 2nd August 2022. The Applicant is behind bars for about 2 years and 4 months. There is no progress in the trial and even the charge is also not framed yet. As per the Charge-sheet, there are 25 witnesses proposed to be examined by the prosecution. The trial is unlikely to conclude any time soon and is likely to take a considerably long time.

11. Speedy trial is one of the facets of right to life and liberty 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.¹ Thus, this is a case where Applicant’s right of speedy trial is violated. Therefore, the Applicant is entitled for bail.

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

12. However, it is required to be noted that as the several witnesses are from District-Pune and there is apprehension that after release, the Applicant will try to influence the witnesses, Mr. Pathan, learned Counsel appearing for the Applicant states the Applicant will therefore not reside within District - Pune and that the Applicant will reside at C/o. Mr. Ramdas Baba Choudhari, Chaudhari Wasti, Kokhadi, Taluka-Parner, District-Ahmednagar.

13. There are no criminal antecedents against the present Applicant.

14. The Applicant does not appear to be at risk of flight.

15. Accordingly, the case is made out for grant of bail for long incarceration. The Applicant can be enlarged on bail by imposing conditions. In view thereof, the following order:-

ORDER

- (a) The Applicant – Nikhil Satish Theurkar be released on bail in connection with C.R. No.201 of 2022 registered with the Ranjangaon MIDC Police Station, District-

Pune on his furnishing P. R. Bond of Rs.1,00,000/- with one or two sureties in the like amount.

- (b) The Applicant shall not enter the Pune district after being released on bail, except for reporting to the Investigating Officer, if called, and for attending the trial.
- (c) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (d) The Applicant shall report to the Parner Police Station, Taluka - Parner, District - Ahmednagar twice a week, on every Sunday and Thursday between 11.00 a.m. and 1.00 p.m. for one year and thereafter, once a week, on every Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Parner Police Station, Taluka - Parner, District – Ahmednagar to communicate details thereof to the Investigating Officer.
- (e) The Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade such a person from disclosing the facts to the Court or

to any Police personnel.

- (f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.
- (h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

16. The Bail Application is disposed of accordingly.

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

[MADHAV J. JAMDAR, J.]