

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3843 OF 2024

Naveed Saeed Rais ... Applicant
Vs.
State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.4216 OF 2024
IN
BAIL APPLICATION NO.3843 OF 2024

Mr. Rajendra Rathod a/w Umar Dalvi a/w Zeeshan Sardar a/w Sohil Ahmed for Applicant

Mr. Prasanna P. Malshe, APP for Respondent-State in ABA No.1773/24

Ms. Tahera Qureshi for applicant in I.A. No. 4216/24

CORAM : MANISH PITALE, J.
DATE : NOVEMBER 19, 2024

P.C. :

. Heard Mr. Rathod, learned counsel for the applicant, Mr. Malshe, learned APP for State and Mr. Qureshi, learned counsel having instructions to appear on behalf of the first informant.

2. The applicant apprehends arrest in connection with FIR No. I-202 of 2015 dated 31.12.2015 registered at Padgha Police Station, District- Bhiwandi, for offences under Sections 302, 307, 326, 324, 336, 504, 506 read with 34 of the Indian Penal Code, 1860 (IPC).

3. The incident took place on 30.12.2015, when the applicant and accused persons were alleged to have assaulted the victim, resulting in his death. The applicant has remained incarcerated for a period of about 8 years and 10 months as an under trial. An earlier bail application moved on behalf of the applicant was dismissed as withdrawn on 16.02.2018, after this Court (Coram: A. S. Gadkari, J) observed that the

Court was not inclined to grant any relief to applicant. Liberty was reserved for applicant to move the Court again for bail if the trial did not commence within the one year from the date of the order.

4. Learned counsel for the applicant has referred to the chronology of events, as also the progress of the trial before the Court and it is submitted that in terms of the law clarified by the Supreme Court as to the extent of power that can be exercised by Constitutional Courts in such matters, on the ground of long incarceration and pendency of trial, this Court may consider enlarging the applicant on bail. The applicant undertakes to abide by conditions that may be imposed by this Court.

5. On the other hand, the learned APP submits that the applicant cannot argue on merits and this is evident from the order dated 16.02.2018 passed in Bail Application No.1545 of 2017, whereby the applicant had to withdraw his application. It is submitted that there is sufficient material to make out a strong *prima facie* case against the applicant. It is further submitted that 8 witnesses are already examined during the course of trial and although 44 witnesses are shown in the list of witnesses in the charge-sheet, the prosecution may not examine all the witnesses. The trial may be expedited.

6. The learned counsel having instructions to appear on behalf of the first informant submitted that the accused persons can be blamed for pendency of the trial and the applicant cannot take advantage of the same. Reference was made to copies of the roznama placed on record along with application to contend that delay is attributable to the accused persons also and therefore, this Court may not show indulgence.

7. In order to appreciate the contentions raised before this Court, it would be appropriate to know the chronology of events. The incident in question, in the present case, took place on 30.12.2015. The FIR was

registered on 31.12.2015 and the applicant was arrested on the same night. The investigation was completed and charge-sheet was filed. Charge was framed as far back as on 06.07.2017 and the trial is still pending, although more than 7 years have passed after framing of charge.

8. The learned counsel for the applicant has brought to the notice of this Court that only 8 witnesses have been examined after framing of the charge as far back as on 06.07.2017. The list of witnesses shows that the prosecution intends to examine 44 witnesses although in practical terms fewer witnesses may be examined. It is evident that substantial number of witnesses remain to be examined by the prosecution. The pace at which the trial has progressed shows slim chances of the trial being completed within reasonable period of time.

9. Although much emphasis was placed on the contents of the roznama, by the learned counsel for the first informant, perusal of the same does not lead to the conclusion that the accused persons or the applicant in particular, have to be blamed for the delay in progress of the trial. It is evident that the applicant has already suffered incarceration for a period of 8 years and 10 months.

10. The Hon'ble Supreme Court in various judgments including judgment in the case of *Union of India Vs. K. A. Najeeb* (2021) 3 **Supreme Court Cases 713** has recognized the power of Constitutional Court, in such situations to enlarge accused under trials on bail. In cases, where the accused under trials have remained incarcerated for a long period of time and there is no possibility of trial being completed within reasonable period of time, following the said position of law, various High Courts including this Court have enlarged such accused under trials on bail.

11. In fact, in the aforesaid judgment, a number of subsequent judgments, including judgment in the case of *Javed Gulam Nabi Shaikh Vs. State of Maharashtra* **2024 SCC Online SC 1693**, the Supreme Court has emphasized that even in cases involving special statutes where granting bail requires satisfaction of stringent conditions. Constitutional Courts can exercise power to enlarge accused under trials on bail without reference to the merits of the matter, purely on the ground of the accused under trial having suffered long incarceration and the trial remaining pending.

12. Applying the said principles to the facts of the present case, this Court is satisfied that the applicant has made out a case for being enlarged on bail, only on the ground of the period of incarceration already suffered by the applicant i.e. about 8 years and 10 months, as also the obvious conclusion that can be reached on the basis of material on record that there is slim possibility of the trial being completed within a reasonable period of time.

13. In view of the above, the application is allowed in the following terms:-

- A. In the event the applicant is arrested in connection with FIR No. I-202 of 2015 dated 31.12.2015 registered at Padgha Police Station, District- Bhiwandi, he shall be released on bail on furnishing PR Bond of Rs.50,000/- and one or two sureties in the like amount;
- B. The applicant shall not enter the jurisdiction of Padgha Police Station, District- Bhiwandi during the pendency of the trial.
- C. The applicant shall cooperate with the trial Court for expeditious trial and he shall attend each and every date,

unless exempted for reasons to be recorded in writing;

- D. The applicant shall not influence the informant, witness or any person concerned with the case and he shall not tamper with the evidence.

14. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

15. The application is disposed of.

16. In view of the disposal of the bail application, intervention application is also disposed of.

(MANISH PITALE, J.)

Ajit Pathrikar