

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.4134 OF 2024

Chandrakant Masanna Gaikwad	...Applicant
<i>Versus</i>	
The State of Maharashtra	...Respondent

Mr. Ritesh M. Thobde a/w. Ms. Zubi Ansari and Mr. Changdev Shingade, Advocates, for the Applicant.
 Mr. C.D. Mali, APP, for the Respondent-State.

CORAM: MADHAV J. JAMDAR, J.
DATED : 16th October 2024

PC:-

1. Heard Mr. Thobde, learned Counsel for the Applicant and Mr. Mali, learned APP for the Respondent-State.

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

1.	C. R. No.	275 of 2021
2.	Date of registration of F.I.R.	13 th June 2021
3.	Name of Police Station	Akkalkot North, District-Solapur
4.	Section/s invoked	302, 326, 324, 323, 427, 504, 506, 146, 147, 148, 149 of the Indian Penal Code, 1860 and 3 and 25 of the Arms Act, 1959.

5.	Date of incident	12 th June 2021
6.	Date of arrest	13 th June 2021
7.	Date of filing of Charge-sheet	6 th September 2021

3. As per the prosecution case, on 12th June 2021 at about 17.30 hours, the Informant along with deceased Vishwanath Patil and others were travelling in a Swift vehicle. Upon reaching the house of the Applicant-Chandrakant Masanna Gaikwad, there was a verbal altercation between them. It is alleged that the Applicant/Accused No.1-Chandrakant then gave a call to other Accused viz.2. Dhondiba Masanna Gaikwad, 3. Masanna Dhondiba Gaikwad, 4. Ambadas Shankar Koli, 5. Ningappa Shankar Koli, 6. Suraykant Shankar Koli, 7. Balbhim Shankar Koli all residents of Mamdabad, Taluka Akkalkot. The Accused persons arrived there and all of them assaulted the Informant and others. In the said assault Vishwanath Patil died.

4. It is the submission of Mr. Thobde, learned Counsel appearing for the Applicant that the Applicant was arrested on 13th June 2021. He submitted that when the incident in question took place, the Applicant was only of 21 years. He submitted that there are cross complaints. He submits that the Informant, deceased-

Vishwanath Patil and others were travelling in a vehicle – Swift and they had come at the house of the Applicant/Accused- Chandrakant Masanna Gaikwad and some altercation took place which resulted into sudden fight. He submitted that in the incident in question, which has resulted into sudden fight between two groups, the present Applicant Chandrakant Gaikwad also suffered grievous injury. He submitted that therefore the Crime was registered at the behest of co-Accused, Dhondiba Masanna Gaikwad against the informant, deceased and some others i.e. total 7 Accused being C.R. No. 276 of 2021 with Akkalkot North Police Station, District- Solapur on 13th June 2021 for the offences punishable under Sections 307, 326, 324, 504, 143, 147, 148, 149 of the Indian Penal Code, 1960 and under Sections 4 and 25 of the Arms Act and also under Sections 3(1)(r)(s), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. He submitted that in the present case, there are about 33 witnesses proposed to be examined by the prosecution and in the cross-complaint, there are about 25 witnesses. The trial of both these cases is required to be conducted one after another and the judgment is required to be delivered simultaneously.

5. On the other hand, Mr. Mali, learned APP strongly opposed the Application. He submitted that perusal of record shows that the main role is attributed to the present Applicant. He submitted that as per the Post-Mortem report, death is caused due to head injury. He submitted that the material on record shows that the Applicant has assaulted the deceased on head by using axe in the incident in question. He submitted that as the main role is attributed to the present Applicant and as the deceased died due to assault by the present Applicant, the Bail Application be rejected. On instructions, he submitted that the Applicant has no antecedents.

6. The material on record shows that the Applicant has assaulted the deceased on head by using axe in the incident in question. As per the Post-Mortem report, death is caused due to head injury. Perusal of the record shows that the main role is attributed is to the present Applicant and in the facts and circumstances of this case the Applicant is not entitled to be released on bail on merits.

7. However, this is a case where there are cross-complaints. As far as the present C. R. No.275 of 2021 is concerned, there are about 33 witnesses proposed to be examined by the prosecution. As far as the cross- complaint is concerned i.e. C. R. No.276 of

2021, about 25 witnesses are proposed to be examined by the prosecution. As per the judgment of the Supreme Court in the case of *Nathi Lal Vs. State of Uttar Pradesh*¹, procedure to be followed in case of cross complaints is set out. The relevant Paragraph No.2 reads as under:-

“2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.”

(Emphasis added)

Thus, as far as as cross-complaints are concerned, trial is to be conducted in one case and arguments to be heard, however, judgment is required to be reserved. After completion of trial of

¹ 1990 Supp SCC 145

one case, trial in another case is to be completed and thereafter judgments are required to be pronounced in both the cases one after another.

8. Perusal of the record shows that in the present case, the incident in question occurred on 12th June 2021, F.I.R. was lodged on 13th June 2021, the Applicant was arrested on 13th June 2021 and, the Charge-sheet was filed on 6th September 2021. Except for framing of the charge, there is no progress in the trial. As far as the present C. R. No.275 of 2021 is concerned, there are about 33 witnesses proposed to be examined by the prosecution. As far as the cross- complaint is concerned i.e. C. R. No.276 of 2021, about 25 witnesses are proposed to be examined by the prosecution. Thus, considerable time will require for completion of the trial in both the cases.

9. 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 Accused². Therefore, the Applicant is entitled to

² Hussainara Khatoon (IV) v. Home Secy., State of Bihar, (1980) 1 SCC 98

be released on bail on the ground of violation of his fundamental right of speedy trial.

10. There are no criminal antecedents against the Applicant.
11. The Applicant does not appear to be at risk of flight.
12. Accordingly, the Applicant can be enlarged on bail by imposing conditions.
13. In view thereof, the following order:-

ORDER

- (a) The Applicant - Chandrakant Masanna Gaikwad be released on bail in connection with C.R. No.275 of 2021 registered with the Akkalkot North Police Station, District – Solapur (Rural) on his furnishing P.R. Bond of Rs.50,000/- with one or two solvent sureties in the like amount.
- (b) 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.
- (c) The Applicant shall report to Akkalkot North Police Station, District – Solapur (Rural) once every week, on every Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial.
- (d) 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.

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

14. The Bail Application is disposed of accordingly.

15. 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.)