

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 4164 OF 2024

Mandar Gajanan Tare	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Shriganesh S. Sawalkar a/w Ms. Gayatri Yadav and Praful Saradkar for the Applicant.

Mr. Babu V. Holambe-Patil, APP for Respondent-State.

**CORAM: MANISH PITALE, J.
DATE : 14th DECEMBER 2024**

P.C. :

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

2. The applicant in the present case was arrested on 19th April 2017 in connection with FIR of same date, bearing No. I-184 of 2017 registered at Narpoli Police Station, Dist. Thane, for offences under Section 302 read with 34 of the Indian Penal Code, 1860 (IPC), Sections 4 and 25 of the Arms Act, 1959 read with certain provisions of the Bombay Police Act, 1951.

3. The allegation against the applicant is that he along with the co-accused person assaulted the victim. The specific overt act of use of knife is alleged against the applicant and it is stated that knife blows were inflicted on the victim, who died on the spot. It

is alleged that the applicant committed the aforesaid act, as he was upset with the victim having relations with a girl, whom the applicant treated as his sister.

4. The learned counsel for the applicant submits that although, a few witnesses claimed to be eye-witnesses to the incident, reliance is mainly placed on CCTV footage. It is claimed that even the witnesses, who are treated as eye-witnesses, had no previous acquaintance with the applicant and while observing the CCTV footage, such witnesses were told that the individuals seen in such footage were the applicant and the co-accused person. It is further submitted that in the present case, the applicant has suffered incarceration for a long period of 7 years and 8 months. The charge is yet to be framed and the *Rojnama* of the concerned trial Court would show that the applicant (accused under-trial) has not been produced before the said Court on various dates, when the proceedings were listed. It is submitted that these circumstances clearly indicate that there is no possibility of the trial commencing in the near future and be completed within a reasonable period of time. It is submitted that the list of witnesses shows 39 witnesses proposed to be examined by the prosecution. On these grounds, relief is sought in the present application.

5. The learned APP, on the other hand, submits that there is sufficient material on record to show the direct involvement of the applicant in the incident in question. The applicant brutally assaulted the victim by means of a knife, as a consequence of

which he suffered injuries on vital parts of his body and died on the spot. It is submitted that, considering the brutality of the assault inflicted by the applicant on the victim, this Court may not show any indulgence. It is further submitted that the CCTV footage clearly shows the presence of the applicant at the spot of the incident, as also his active role in assaulting the victim by means of knife. It is submitted that the statements of witnesses also corroborate the version of the prosecution. It is submitted that this Court may consider expediting the trial, rather than allowing the application.

6. This Court is of the opinion that although, serious allegations are made against the applicant, proof of role of the applicant in the present case would be a matter for trial. But, the applicant has already suffered incarceration for a period of about 7 years and 8 months, even charge has not been framed and therefore, there is no question of the trial having commenced.

7. The *Rojnama* of the concerned trial Court, highlighted on behalf of the applicant, shows that although, the proceedings have been listed from time to time, the applicant (accused under-trial) has not even been produced before the said Court.

8. In the absence of even charge being framed and the list of witnesses showing 39 witnesses proposed to be examined by the prosecution, there is substance in the contention raised on behalf of the applicant that there is hardly any possibility of the trial

commencing in the near future and that there is remote possibility of the trial being completed within reasonable period of time.

9. The Supreme Court in various judgments has highlighted the aspect of right to speedy trial of accused under-trial being a facet of right to life under Section 21 of the Constitution of India. It has been emphasized that seriousness of the offences registered against the accused under-trial, cannot be a ground to deny bail, despite the fact that such an accused under-trial has suffered long period of incarceration and there is remote possibility of the trial being completed within reasonable period of time. In the case of *Javed Gulam Nabi Shaikh v/s. The State of Maharashtra, 2024 SCC OnLine SC 1693*, the Supreme Court has relied upon earlier judgments in the cases of *Hussainara Khatoon & Ors. v/s. State of Bihar, 1981 SCC 81*, *Kadra Pehadiya & Ors. v/s. State of Bihar, 1981 3 SCC 671*, *Union of India v/s. K. A. Najeeb, (2021) 3 SCC 713* and *Satender Kumar Antil v/s. Central Bureau of Investigation and Anr., (2022) 10 SCC 51*, to hold that in such cases, Constitutional Courts must exercise their power to enlarge the accused under-trials on bail, while imposing appropriate conditions.

10. It is also indicated in the aforesaid judgment and earlier judgments that even in cases, involving offences under special Statutes, where the accused under-trials are required to satisfy a higher threshold for being enlarged on bail, the Constitutional Courts ought to exercise the aforesaid power to grant relief to

such accused under-trials.

11. Considering the admitted position on facts in the present case, showing that even charge has not been framed, the prosecution intends to examine 39 witnesses and the applicant has suffered incarceration for about 7 years and 8 months, this Court, as a Constitutional Court, is inclined to exercise its power in favour of the applicant to allow the application. This Court intends to impose stringent conditions on the applicant, while allowing the application.

12. The application is allowed in the following terms:

- (a) The applicant shall be released on bail in connection with FIR No. I-184 of 2017 registered at Narpoli Police Station, Dist. Thane, on furnishing P.R. Bond of Rs. 25,000/- and one or two sureties in the like amount.
- (b) The applicant shall not enter Bhiwandi, Dist. Thane, during the pendency of the trial.
- (c) The applicant shall report to the Thane Police Station, Dist. Thane, on first Monday of each month between 10:00 a.m. and 12:00 noon, during the pendency of the trial. The said Police Station is directed to record the attendance of the applicant in terms of the aforesaid direction.
- (d) The applicant shall cooperate with the trial Court for

expeditious trial and he shall attend each and every date, unless exempted by the trial Court, for reasons to be recorded in writing.

- (e) The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses or any other person concerned with the case.
- (f) The applicant, upon being released on bail, shall place on record of the trial Court the details of his Contact Number and residential address with updates in case of any change.

13. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled. It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

14. The application is disposed of.

MANISH PITALE, J.