



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4180 OF 2024**

Rafiq Bablu Shaikh	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. Satyavrat P. Joshi with Mr. Yash G. Fadtare, for Applicant.
Mr. H.J.Dedhia, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 17 DECEMBER 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant who is arraigned in Sessions Case No.13 of 2020 arising out of C.R.No.112 of 2019 registered with Sanjay Nagar Police Station for the offences punishable under Sections 302, 120-B, 504, 506 read with Section 34 of the Indian Penal Code, 1860 and Sections 4 read with 27 of the Arms Act, 1959, has preferred this application to enlarge him on bail.
3. At the outset, it is necessary to note that this is a second application for bail. First application being BA No.2939 of 2021 was rejected by this Court by a reasoned order dated 29 June 2022. To have a correct perspective, it may be apposite to note the reasons which weighed with this Court in rejecting the first bail application. The observations in paragraph Nos.11 to 15 read as under :

“11. At this juncture, it is imperative to note that the autopsy

surgeon opined that the deceased died on account of hemorrhagic shock due to multiple stab injuries. The Autopsy Surgeon noted as many as 14 injuries. There were numerous incised wounds on the vital parts of the body of the deceased and stab wounds on the abdomen of the deceased. It seems the deceased was assaulted by means of sharp weapons with ferocity.

12. The endeavour on the part of the applicant to cast a doubt over the presence of the applicant and Shriniwas, his brother, at the scene of occurrence is required to be appreciated in the light of the fact that they have stated that the applicant had called deceased at HUDCO Colony to resolve the dispute. In order to avoid further confrontation, they had followed the deceased. In the light of the sequence of the events narrated by them, the claim of the first informant and Shriniwas, cannot be completely brushed aside.

13. In addition, there is circumstantial evidence in the nature of the blood stains of human origin having been found on the weapon of assault and the clothes on the person of the applicant.

14. The fact that as many as seven offences have been registered against the applicant cannot be said to be inconsequential or immaterial. The antecedents of the applicant deserve cognizance in the light of the contention of the first informant that the applicant and co-accused no.1 had created a reign of terror in Sanjay Nagar area. Furthermore, the fact that the initial quarrel was between the deceased and co-accused nos.3 to 5 cannot be lost sight of. The applicant allegedly came in the frame as the co-accused no.3 is the brother-in-law of the applicant.

15. In the totality of the circumstances, the apprehension on the part of the prosecution appears well-founded. The release of the applicant on bail, at this stage, is fraught with a serious risk of tampering with evidence as well as fleeing away from justice."

4. Since this Court has recorded adequate reasons for rejection of the

prayer for bail, there is no propriety in again considering the prayer for bail afresh on merits.

5. Mr. Joshi, learned Counsel for the Applicant submitted that the applicant is now seeking bail primarily on the ground of long period of incarceration. The applicant has been in custody since 9 June 2019. Though the trial has commenced, it is unlikely that the trial can be concluded within a reasonable period. Therefore, having regard to the period of incarceration, the applicant be enlarged on bail.

6. As there was a controversy as to whom the delay is attributable, a report was called from the learned Additional Sessions Judge seized with Sessions Case No.13 of 2020.

7. From the perusal of the report, it appears that the delay is attributable to the applicant and the co-accused equally. Adjournments were sought on behalf of the accused to cross-examine the prosecution witnesses. The learned Sessions Judge has, inter alia, observed that as accused Nos.1 and 2 – the applicant herein, were intentionally protracting the trial, a detailed order was passed on the application for adjournment preferred on behalf of the accused. Eventually, no cross order was required to be passed against accused Nos.1 and 2. They even declined to accept the legal aid which were offered to them as the learned Advocate did not turn up on 5 December 2024. On 12 December 2024, again an application for adjournment was filed on

behalf of the applicant. Ultimately, the learned Sessions Judge opined that accused Nos.1 and 2 are intentionally protracting the trial.

8. In view of the aforesaid report of the learned Additional Sessions Judge, I find it difficult to accede to the submission of Mr. Joshi that the applicant is entitled to be enlarged on bail on account of long period of incarceration. A profitable reference can be made to a recent order passed by the Supreme Court in the case of *X vs. State of Rajasthan and anr.*¹ wherein the Supreme Court has cautioned against the grant of bail in serious offences, after the commencement of the trial, in the following words:

“14. Ordinarily in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused.

....

16. We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach to its final conclusion which may either result in the conviction of the accused or acquittal of the accused. The moment the High Court exercises its discretion in favour of the accused and orders release of the accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on

1 SPL(Cri) No.13378/2024 dtd.25/11/2024.

the ground that right of the accused to have a speedy trial has been infringed.”

(emphasis supplied)

9. Mr. Joshi attempted to salvage the position by submitting that the prosecution has cited as many as 57 witnesses. Thus, in any event, the trial is not likely to conclude in a near future.

10. Learned APP informed the Court that the learned PP seized with the matter has informed that the prosecution proposes to examine 5 to 10 more witnesses.

11. Since the prosecution has already examined 8 witnesses, and, prima facie, it appears that the delay in trial is primarily attributable to the applicant, in the peculiar facts of the case, I am not inclined to exercise discretion in favour of the applicant on the count of long period of incarceration.

12. Hence, the following order :

ORDER

(i) The Application stands rejected.

(ii) The learned Additional Sessions Judge seized with Sessions Case No.13 of 2020 is requested to make an endeavour to conclude the trial as expeditiously as possible.

(iii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the

entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N.J.JAMADAR, J.)