

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4657 OF 2024
WITH
INTERIM APPLICATION NO. 4909 OF 2024

Venkatesh Shettiyar and anr. ...Applicants

Versus

The State of Maharashtra ...Respondent

Mr. Aditya Sharma, for the Applicants.

Mr. Himanshu Kode, for the Intervener.

Mrs. Aruna Pail, Special PP a/w H. J. Dedhia, APP for the
State.

CORAM: N. J. JAMADAR, J.

DATED: 5th DECEMBER, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. The applicants, who are arraigned as accused Nos.1 and 3 in Sessions Case No.29 of 2023 arising out of CR No.67 of 2013 registered with Vashi Police Station, for the offences punishable under Sections 120B, 302 and 201 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Sections 3(25), 3(27) and 4(27) of the Arms Act, 1959, have preferred this application to enlarge them on bail, on the ground of long period of incarceration.

3. In fact, this is the third application for bail before this Bench. By an order dated 14th March, 2024, this Court rejected BA/3797/2023 observing, *inter alia*, as under:

“24) Suffice it to note that prima facie there is material to indicate that applicant No. 1 fired at the deceased. Applicant No.2 unleashed blows by means of Chopper. Apart from the ocular account, the act of the applicants is captured in the CCTV footage. Applicant No. 1 appears to be wearing the uniform of a security guard and seen firing at the deceased. Applicant No. 2 is allegedly seen giving blows by means of Chopper. What weight is to be attached to this evidence is undoubtedly a matter for consideration at the trial. However, since the accusation is that the applicants allegedly killed the deceased as contract killers and, prima facie, there is evidence against the applicants, in my considered view, the applicants claim for parity with the co-accused, who were alleged to be the conspirators, abettors, accessory before the fact and accessory after the fact, ought to be rejected.

25) In the backdrop of the facts of the case, the apprehension on the part of the prosecution also appears well founded. In the totality of the circumstances, I am not inclined to exercise the discretion in favour of the applicant.

26) I am impelled to take this view also in view of the report of the learned Additional Sessions Judge that the trial is likely to be concluded by the end of June, 2024.”

4. Aggrieved by the aforesaid order, the applicants preferred Special Leave to Appeal (Cri) No(s).6347-6348/2024, before the Supreme Court. By an order dated 13th May, 2024, the Supreme Court dismissed the said SLPs as withdrawn with liberty to seek alternative/other remedies if so advised.

5. The applicants again approached this Court by preferring BA/2908/2024. The said application was also disposed as withdrawn. The learned Sessions Judge was,

however, requested to positively conclude the recording of evidence for the prosecution by the end of October, 2024. The applicants were granted liberty to revive the prayer for bail in the event recording of evidence is not concluded by the end of October, 2024. Availing the said liberty, the applicants have again preferred this application.

6. Mr. Sharma, the learned Counsel for the applicants, submitted that though the prosecution has made a statement before the Court that the prosecution shall not take an adjournment, on two of the scheduled dates, the witness did not turn up and, therefore, the matter was required to be adjourned. Attention of the Court was invited to the *roznama* of the proceedings in the Sessions Case No.29 of 2023 dated 20th September, 2024 and 23rd October, 2024.

7. It appears that the witness was absent on account of illness. On 23rd October, 2024, a medical certificate was filed in support of the prayer for adjournment.

8. Evidently, the examination-in-chief of the Investigating Officer (PW-80) was concluded on 13th November, 2024.

9. Mr. Sharma, the learned Counsel for the applicants, submitted that since the evidence of the prosecution could not be completed by the end of October, 2024 and the witness

is yet to be cross-examined, the applicants now deserve to be enlarged on bail.

10. The learned Special PP countered the submissions on behalf of the applicants. It was forcefully submitted that the evidence of Investigating Officer (PW-80) could not be completed as adjournment was sought by the learned Advocate appearing for the applicants. Attention of the Court was invited to the *roznama* dated 13th November, 2024 and 4th December, 2024.

11. The relevant part of the *roznama* dated 13th November, 2024 reads as under:

“... Today in this matter examination in chief of P.W.80 is completed. Cross-examination of this witness by Ld. Adv. Mr. Kankan started. He has taken certain cross-examination. Adjourned for further cross-examination. In fact, matter was kept for two days today and tomorrow. Ld. Counsel Mr. Kankan as he is having marriage ceremony at Jaipur and for his personal reason matter is kept on 2nd, 3rd and 4th December, 2024. Considering his personal reason matter is kept on 3rd December, 2024 and on 4th December, 2024.”

12. On 4th December, 2024 it appears, the cross-examination of Investigating Officer on behalf of the accused was conducted for a while and thereafter again adjournment was sought. The *roznama* dated 4th December, 2024 records as under:

“Today in this matter further cross-examination of investigation officer Shri. Santosh Bagave continued. As per

the prosecution, this is the last witness. At the request on the side of the accused, Mr. Kankan for accused Nos.1 to 3, 7 & 8 further cross examination deferred and he requested to kept matter for further cross examination on 19, 20, 21 December, 2024. At his request and for his personal difficulties, cross is deferred till that date."

13. The aforesaid record of the proceeding by the learned Additional Sessions Judge is self-explanatory. It is true on the two of the scheduled dates the Investigating Officer could not appear before the Court and the matter was required to be adjourned. However, on both the occasions, adjournment was sought on the ground that the Investigating Officer was unwell. In contrast, the afore-extracted *roznama* would indicate that the accused had sought adjournment to suit the personal convenience of the learned Advocate who is cross-examining the IO (PW-80).

14. It is trite when the ground of delay is pressed into service to seek the release on bail, the delay shall not be attributable to the acts and conduct of the accused. 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, after the commencement of the trial, in serious offences, in the following words:

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

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

(emphasis supplied)

15. In the case at hand, apart from the two dates on which the Investigating Officer was not present, purportedly on account of illness, the Additional Sessions Judge has made earnest endeavour to conclude the recording of the prosecution’s evidence. Thus, it cannot be said that the delay is attributable to the prosecution. Adjournments were sought on behalf of the accused, despite the learned Additional Sessions Judge having posted the trial on consecutive days. Therefore, I am not inclined to entertain the prayer for bail as this Court had already passed a reasoned order, while rejecting BA/3797/2023.

16. Hence, the following order:

: O R D E R :

- (i)** BA/4657/2024 stands rejected.
- (ii)** In view of rejection of BA/4657/2024, IA/4909/2024 also stands disposed.

[N. J. JAMADAR, J.]