

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

BAIL APPLICATION NO. 4904 OF 2024

Surekha Gorakshanath Gavle @ Surekha
Prasad Kakad ... Applicant
Versus
The State of Maharashtra ... Respondent

Mr. Rajendra Rathod a/w Umar Dalvi and Ansari M. Siraj for the Applicant.

Mr. Sagar R. Agarkar, APP for Respondent-State.

**CORAM: MANISH PITALE, J.
DATE : 10th DECEMBER 2024**

P.C. :

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

2. The applicant was arrested on 1st July 2017 in connection with FIR No. 27 of 2017 registered at DCB, CID, Mumbai, Unit-III (previously registered as FIR No. 263 of 2017 dated 24th June 2017 at Nagpada Police Station, Mumbai) for offences under Section 302, 120-B, 201 and 506(2) read with 34 of the Indian Penal Code, 1860 (IPC). The applicant is a lady Police Constable, who was on duty when the deceased, who was an inmate in the jail where the applicant was on duty, was found dead in suspicious circumstances. The allegation against the applicant and other accused persons is that they dragged and beat up the victim, which resulted in her death.

3. The record shows this is the third bail application filed on behalf of the applicant. The first bail application was dismissed along with bail applications of co-accused persons by an order dated 8th July 2019. Thereafter, the second bail application of the applicant was dismissed by an order dated 25th January 2023 passed by this Court.

4. The learned counsel for the applicant submitted that submissions on merits cannot be repeated before this Court, in the light that the earlier bail applications having been dismissed. Considering the fact that the applicant has already suffered incarceration for a period of 7 years and 5 months and the prosecution has been able to examine only 27 witnesses, while the list of witnesses shows 182 witnesses proposed to be examined, this Court may consider allowing the application, subject to appropriate conditions. Reliance is placed on the position of law clarified by the Supreme Court in recent judgments about the manner in which bail applications ought to be dealt with, in such circumstances where the accused under-trial has suffered long incarceration.

5. The learned APP submits that the observations made in the earlier orders, dismissing the applications of the applicant on merits, show the active involvement of the applicant in the present case, which resulted in the death of an inmate. It was submitted that considering the seriousness of the allegations and the ample material available against the applicant, this Court may not allow

the application, as it may inure to the benefit of other accused persons also.

6. A perusal of the earlier orders passed in the two bail applications of the applicant would show that there are indeed observations made on merits while dismissing the said applications. To be fair, the learned counsel for the applicant did not advance any submissions on the merits of the matter, while limiting the submissions only to the aforesaid aspect of long incarceration already suffered by the applicant and the stage of the trial as on today.

7. This Court has perused the earlier orders passed in the applications of the applicant as well as some of the co-accused persons. It is relevant to note that in an order dated 18th October 2022 passed by this Court (Coram: Bharati Dangre, J.) in Bail Application No. 614 of 2021 in the case of co-accused person-Sheetal Vasanta Shegaonkar, while rejecting the application, this Court observed that considering the long incarceration suffered by the accused therein, the trial Court would make an endeavour to conclude the trial within one year from the date of the order. Thereafter, while rejecting the second bail application of the applicant by an order dated 25th January 2023, this Court (Coram: Revati Mohite Dere, J.), specifically observed that if the trial was not concluded in terms of the aforesaid order dated 18th October 2022, liberty would be reserved to the applicant to apply afresh for bail.

8. In the said bail application of the said co-accused-Sheetal Vasanta Shegaonkar filed in the year 2021, this Court (Coram: G. A. Sanap, J.) by an order dated 6th November 2023 granted extension of time for disposal of the matter before the Session Court within one year from the date of the order. The said period of one year is already over.

9. As on today, this Court is informed that the prosecution has been able to examine only 27 witnesses, while the list of witnesses shows 182 witnesses proposed to be examined by the prosecution.

10. Although, in practical terms fewer witnesses would be examined, but considering the nature of the incident and the list of witnesses forming part of the charge-sheet, substantial number of witnesses are yet to be examined. This Court does not find that in the facts of the present case and the stage of the trial as on today, there is any possibility of the trial being completed within a reasonable period of time.

11. The applicant having been arrested on 1st July 2017, has already suffered incarceration for a long period of 7 years 5 months. The applicant is a woman and she has remained incarcerated for the aforesaid long period of time. These are the factors relevant for deciding applications for bail filed purely on the aforesaid ground without any reference to the merits of the matter. In a recent judgment in the case of *Javed Gulam Nabi Shaikh v/s. The State of Maharashtra, 2024 SCC OnLine SC 1693*,

while relying 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*, the Supreme Court reiterated the position that in such circumstances Constitutional Courts must exercise their powers to pass favourable orders in bail applications, where accused under-trial has suffered long period of incarceration and there is remote possibility of trial being completed within reasonable period of time. While laying down the said position of law, the Supreme Court has emphasized that right to speedy trial is recognized as a facet of fundamental right under Article 21 of the Constitution of India and merely because the allegations made against the accused under-trial are extremely serious, it cannot be said that Constitutional Courts cannot exercise appropriate powers. In fact, in the aforesaid cases, the Supreme Court was dealing with special statutes, wherein the threshold to be satisfied by the accused under-trial for being enlarged on bail, is much higher. Despite the said position, the Supreme Court emphasized upon the power to be exercised by the Constitutional Courts in the said manner.

12. The facts of the present case clearly show that the applicant is entitled to relief, in view of the admitted position of facts. Therefore, the application is allowed in the following terms :

- (a) The applicant shall be released on bail in connection

with FIR No. 27 of 2017 registered at DCB, CID, Mumbai, Unit-III (previously registered as FIR No. 263 of 2017 dated 24th June 2017 at Nagpada Police Station, Mumbai), on furnishing P.R. Bond of Rs. 50,000/- and one or two sureties in the like amount.

- (b) The applicant shall cooperate with the trial Court for expeditious trial and she shall attend each and every date, unless exempted by the trial Court, for reasons to be recorded in writing.
- (c) The applicant shall not tamper with the evidence of the prosecution and she shall not influence the informant, witnesses or any other person concerned with the case.
- (d) The applicant, upon being released on bail, shall place on record of the trial Court the details of her 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.