



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.89 OF 2023

(Rehmat Khan Pathan @ Pappu Pathan s/o Noorkhan Pathan Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. U.J. Deshpande, Advocate for the applicant.
Mr. N.R. Rode, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- FEBRUARY 8, 2024.

By preferring this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure. The applicant came to be arrested on 02/08/2018 in connection with Crime No.322/2018 registered with Police Station Balapur, District Akola for the offence punishable under Sections 302, 120B read with Section 34 of the Indian Penal Code and Section 4(25) of the Arms Act.

2. The accusation against the present applicant is on the basis of report lodged by Digambar Dutonde on an allegation that on 01/08/2018, he returned home at about 6:30 p.m. and his neighbour Sagar Ganesh Khadse disclosed him that there was a quarrel between Amol @ Shubham and the present applicant. It is further disclosed to him that thereafter present applicant assaulted the deceased by means of Gupti by giving blow on his chest due to which he sustained the injuries and succumbed to the death.

3. Learned Counsel appearing for the applicant submitted that the application filed by the applicant is mainly on the ground of delay in trial. In the present matter, charge-sheet is filed by the Investigating Officer on 27/10/2018 and charge is framed on 04/02/2021. Out of 31 witnesses only one witness is examined. He submitted that there is inordinate delay in trial. The applicant has already spent almost six years as under trial prisoner and there is no likelihood of conclusion of the trial in the near future. In support of his contention, he placed reliance on the decision of the Hon'ble Supreme Court in case of ***Union of India vs. K.A. Najeeb (2021) 2 Scale 294.***

4. *Per contra*, learned Additional Public Prosecutor submitted that the trial is not delayed due to the prosecution but the applicant has filed an application below exhibit 77 and it was pending for long time for disposal of this application. At the most this Court shall direct the trial Court to expedite the trial. There is a prima facie case against the present applicant. If he is released on bail he will tamper with the prosecution evidence and will not be available for trial. In view of that the application deserves to be rejected.

5. Having heard learned Counsel appearing for the parties and perused the investigation papers. From the recitals of the FIR it reveals that it was the present applicant to whom the vital role is assigned in the charge-sheet. The postmortem report is also on record which shows that the deceased has sustained three stabbed

injuries which resulted into his death as due to shock and haemorrhage following stab wound over lung. Thus, *prima facie* evidence against the present applicant showing his connection with the alleged crime.

6. Admittedly, present application is not filed by the applicant for grant of bail on merits. It is mainly on the ground that there is inordinate delay in trial. The Roznama which is placed on record also shows that charge is framed long back on 04/02/2021. Thereafter, one application below exhibit 77 was filed by the applicant. It was pending for long time. Admittedly, the present applicant has undergone almost six years as a undertrial prisoner. In the above circumstances, it is necessary to consider the observations of the Hon'ble Apex Court in the case of *Union of India vs. K.A. Najeer (supra)* relied upon by the learned Counsel for the applicant. Wherein the Hon'ble Apex Court has considered that even in the cases of special legislation like the Terrorists and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 which too have somewhat rigorous conditions for grant of bail, this Court in *Paramjit Singh v. State (NCT of Delhi) (1999) 9 SCC 252*, *Babba alias Shankar Raghuman Rohida v. State of Maharashtra, (2005) 1 SCC 569* and *Umarmia alias Mamumia v. State of Gujarat (2017) 2 SCC 731* enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh

conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians. In paragraph 16, the Hon'ble Apex Court further held that this Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In *Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India (1994) 6 SCC 731*, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.

7. In view of the above observation on the fact, the Hon'ble Apex Court further considered by observing that we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's

prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's rights to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.

8. In the light of the above observations of the Hon'ble Apex Court, here also in the present case the applicant is arrested on 02/08/2018. Charges framed on 04/02/2021. There is no progress trial. Out of 31 witnesses only one witness is examined and there is no possibility of conclusion of the trial in near future. Admittedly, the grave charge is framed against the present applicant but considering the long period already undergone by the applicant as undertrial prisoner and bail is a rule and rejection is an exception. The applicant cannot be put behind the bars by way of punishment. In view of that the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant – Rehmat Khan Pathan
@ Pappu Pathan s/o Noorkhan Pathan in
connection with Crime No.322/2018

registered with Police Station Balapur, District Akola for the offence punishable under Sections 302, 120B read with Section 34 of the Indian Penal Code and Section 4(25) of the Arms Act, be released on bail on furnishing P.R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall not leave the jurisdiction of the Akola District without prior permission of the Court.

(iv) The applicant shall not enter into the vicinity of Goregaon Khd. Tq. Balapur, Dist. Akola till culmination of the trial.

(v) The applicant shall attend the Balapur police station, District Akola twice in a month i.e. on 1st and 15th of every month and the Police Officer of the concerned Police Station shall record his presence.

(vi) The applicant shall furnish his Cell phone number and address where he would reside after release on bail with address proof before the Investigating officer.

(vii) The applicant shall not directly or indirectly make any inducement and threat or

promise to any person acquainted with the facts of the present case.

9. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*