



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

CRIMINAL APPLICATION (BA) NO.122/2024

Uttam Sapan Senapati

..VS..

**State of Maharashtra, through Police Station Officer, Police Station, Kalamna,
Nagpur**

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri S.P.Bhandarkar, Counsel with Shri Atharva Khadse, Advocate for the Applicant.
Shri D.V.Chauhan, Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 01/08/2024

PRONOUNCED ON : 07/08/2024

1. By this application, being moved under Section 439 of the Code of Criminal Procedure, the applicant seeks regular bail in connection with Crime No.491/2019 registered with the non-applicant/police station for offences punishable under Sections 302, 307, 341, 323, 143, 147, 148, and 149 of the Indian Penal Code.

2. The applicant came to be arrested on 5.6.2019 and since then he is in jail.

3. On 4.6.2019, complainant Rashi Vasanta Khobragade, who is transgender, lodged a complaint with the

non-applicant/police station on the basis of which the crime is registered. As per her report, both the applicant and deceased Pravin @ Chamcham Prakash Gajbhiye are transgenders. A group of transgenders led by the applicant earn their livelihood by singing, dancing, and collecting amounts in ritual events performed in the society. She is also a member of the group. The amounts and grains collected during the course of day are distributed amongst the group members at the house of the applicant and, thereafter, members of the group leave for their homes. Prior fifteen days of lodging of the said complaint, as alleged, the applicant enquired the group of members about offerings collected from dancing and singing since some members of the group were not placing the same offerings being offered to them before the applicant. The complainant and her associates Divya, Sapna Guru, and Santoshi accepted about taking of offerings received by them to their homes and, therefore, the applicant restrained them from their daily livelihood i.e. dancing and singing for seven days as a punishment. However, her one of associates deceased Pravin @ Chamcham Prakash Gajbhiye suggested the applicant instead of punishing for seven days, they be punished with fine only.

Other group members totaling 20-25 also suggested that they be removed from their works also. Thereafter, on being called by the applicant, near about thirty transgenders went at his house including deceased Pravin @ Chamcham Prakash Gajbhiye. There was a discussion about the offerings. As put forth before the applicant by the deceased, it was decided that all transgenders should place offerings offered to them before the applicant. However, it was decided that old transgenders will not give offerings to the applicant. As per the report, transgenders were following the same practice as decided. As the deceased used to favour members of the group of the complainant, it was not acceptable to the applicant and, therefore, there used to be verbal spats between them.

4. On the day of the incident i.e. 4.6.2019, as usual, the complainant along with the deceased and Naushad went to her work and returned at about 1:30 pm to the house of the applicant to deposit offerings. While the complainant and deceased Pravin were depositing the same, the applicant, Kiran Gawali, Chattu Kamal Uike, Nishar Shaikh along with two unknown persons started assaulting deceased Pravin by knives and sticks and when the complainant intervened, she was also

beaten and pushed. After the incident, attackers ran away from the spot. As the deceased received injuries on his head, hands, chest, back, face, and blood was oozing, the complainant took him to hospital in an unconscious condition with the help of auto driver Naushad and the treatment is being given to the deceased.

Hence, the report is lodged.

5. Heard learned counsel Shri S.P.Bhandarkar for the applicant and learned Additional Public Prosecutor Shri D.V.Chauhan for the State.

6. Learned counsel for the applicant submitted that the applicant is incarcerated in jail since the date of his arrest from 5.6.2019. There is no progress in the trial. The applicant is not produced on several dates and the trial is held up. On merits also, he submitted that co-accused Kiran Gawli is already released on bail by this court and another co-accused Manju Senapati is also released on bail by the trial court. Thus, ground of parity is also available to the applicant. He submitted that if entire investigation papers are perused, it would show that general allegations are made against the applicant that he has

given a blow of knife on the person of the deceased. As such, the applicant be released on bail.

7. In support of his contentions, learned counsel for the applicant placed reliance on following decisions:

1. Criminal Appeal No.1578/2023 (Sebil Elanjimpally vs. The State of Odisha) decided by the Honourable Apex Court on 18.5.2023;
2. Bail Application No.2436/2024 (xxx vs. The State of Maharashtra) decided by this court at Principal Seat at Bombay on 27.6.2024;
3. Special Leave to Appeal (Cri) No.3205/2024 (Ramkripal Meena vs. Directorate of Enforcement) decided by the Honourable Apex Court on 30.7.2024;
4. Prabhakar Tewari vs. State of Uttar Pradesh and anr, reported in(2020)11 SCC 648;
5. Criminal Appeal No.2790/2024 (Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh) decided by the Honourable Apex Court on 18.7.2024, and
6. Criminal Bail Application No.2244/2023 (Jahid alias Javed Liyakat Ansari vs. The State of Maharashtra) decided by this court at Principal Seat at Bombay on 18.12.2023.

Learned counsel for the applicant submitted that in decisions *supra* delay in commencement of trial was considered by the Honourable Apex Court and it is held that a constitutional

court cannot be restrained from granting bail to an accused despite restrictive statutory provisions if it finds that the right of the accused under Article 21 of the Indian Constitution has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favor of constitutionalism and the rule of law of which liberty is an intrinsic part. A constitutional court may decline to grant bail. However, it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence.

8. *Per contra*, learned Public Prosecutor for the State pointed out to report on record sent by learned Ad hoc District Judge-1 and Additional Sessions Judge, Nagpur and submitted that the said report shows that chargesheet is submitted before the Magistrate on 31.8.2019. The case was committed to the Sessions Court on 11.9.2019. Due to absence of some of accused, non-bailable warrants were issued against them. In the meantime, some accused filed applicants for discharge. There was repeated absence of some of accused and non bailable warrants were issued. On 18.7.2024, the applicant also denied to

appear before the court for reason of ill-health. Thus, due to the absence of the accused, charge could not be framed and it was the accused due to whose conduct the trial was held up. He also submitted that there is no dispute as to fact that the Honourable Apex Court considered the delay in trial and held that there is a vivid distinction between the parameters to be applied while considering a bail application.

He submitted that in the present case, the applicant is involved in a crime like murder. The applicant and the deceased are transgenders and the dispute arose between them in respect of collection by group of transgenders and the applicant and other co-accused prepared to commit the offence and in pursuance of the common object gave blow by sharp weapon on the person of the deceased. He also invited my attention to various statements of witnesses and submitted that these statements show character of person who is behind the bars. Statements of witnesses show that the applicant, who claims to be leader of the group of transgenders, not only harassed them but also kept them without food merely because they carried food grains collected by them to their houses without permission of the applicant. He invited my attention to

statement of the complainant, which shows that some of transgenders collected rice and they have not given share to the applicant and, therefore, they were punished keeping them on empty stomach. Not only this, though the applicant is behind the bars, he threatened witnesses in the court premises, which sufficiently shows that the applicant used his influence and deterrence and tampered with prosecution witnesses by creating undue influence upon them. The tampering of witnesses itself is sufficient to show that though he is behind the bars, he makes every efforts to tamper witnesses. He submitted that mere delay in trial pertaining to grave offences is not sufficient to grant bail to accused and prays for rejection of the application.

9. Heard both sides. Perusal of entire investigation papers shows that out of the dispute arose between the group of transgenders, the applicant and other co-accused in furtherance of their common object by preparing themselves committed murder of the deceased. On the day of the incident, in the evening, when the applicant was taking account of money collected, there was a dispute between the deceased and the applicant. The applicant and other co-accused went in one room and came along with weapons in their hands and gave blow of

knife on the person of the deceased. Due to the assault on the person of the deceased, the deceased sustained as many as 21 injuries on his person and he succumbed to head injury.

10. During investigation, the investigating officer has drawn spot panchanama and collected blood stains from the spot of the incident. On the basis of memorandum statement of the applicant, weapons, i.e. two knives and a stick, were recovered having blood stains on it. The diagram of weapon shows type of weapons used by the applicant while committing the crime. Statements of eyewitnesses attribute a specific role to the applicant. The entire incident is initiated at the instance of the applicant and he is the root cause of the said incident. Thus, as far as merits of the matter is concerned, the applicant was leading groups of transgenders who were collecting money as well as food grains for their livelihood. They had to produce all collections before the applicant and after handing over share to the applicant, they were able to take their shares. If somebody fails to give the share, the said person has to sleep without food by way of punishment. Statements of transgenders in the group sufficiently show in what manner they were ill-treated by the applicant. The applicant treated the deceased in the similar

manner and when the deceased opposed for the same, he was eliminated. Thus, there is a *prima facie* material against the applicant to connect him with the alleged offence.

11. Insofar as parity is concerned, co-accused are released on bail on ground that the complainant has not specified role of co-accused who used sticks and, therefore, they were released on bail. As regards the applicant is concerned, allegations levelled against him are that he gave blows of sharp weapon knife on the person of the deceased and the deceased sustained as many as 21 injuries.

12. Insofar as the delay in trial is concerned, there is no dispute as to fact that the applicant was arrested on 5.6.2019 and since then he is behind the bars. The report of Sessions Judge, which is filed on record, shows that various applications are filed by other co-accused either for grant of bail or for discharge which delayed the trial. Accused No.4 is absconding and presence of some of accused was secured by issuing warrants. The applicant also denied to appear before the court on 18.7.2024. The said report shows every effort is taken to secure presence of the accused, however due to absence of the

accused, charge could not be framed and the trial was not commenced. The report further shows that the delay in trial is only because of absence of the accused.

13. Even, in the case of special legislation like the Terrorist 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, the Honourable Apex Court in **Paramjit Singh vs. State (NCT of Delhi)**, reported in (1999) 9 SCC 252, **Babba alias Shankar Raghuman Rohida vs. State of Maharashtra**, reported in (2005) 11 SCC 569, and **Umarmia alias Mamumia vs. State of Gujarat**, reported in (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. He submitted that the Honourable Apex Court also considered Article 21 of the Constitution of India and held that the Union of India also recognized right to speedy trial as fundamental right in their written submissions and thus submitted that in a limited situation right of bail can be granted in case of violation of Article 21 of the Constitution of India.

14. There is no dispute as to the settled legal position that 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. The Honourable Apex Court in various decisions referred by learned counsel for the applicant observed that under-trial prisoners cannot indefinitely be detained during pendency of 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.

15. In the light of the above well settled legal position, if facts in the present case are considered, it would show that in all nine offences are registered against the applicant at various police stations of a similar nature wherein involvement of the

applicant revealed that he is member of unlawful assembly and in pursuance of the common object of that assembly, he is involved in the case like attempt to murders or assaults on various persons.

16. Another aspect requires to be seen is, that there is a direct evidence against the applicant and subsequent conduct of the applicant shows that he has already made an attempt by threatening witnesses to tamper the prosecution evidence.

17. Another fact requires to be considered is, that since arrest of the applicant and other co-accused, there were attempts by the accused to delay the trial either by filing applications for discharge or by filing applications for bail. Not only this, some of accused made attempts to hold the trial by remaining absent. The report on record sent by learned Sessions Judge and certified copy of Roznama show that on every occasion, one or other co-accused remains absent and due to the absence of some of accused, charge could not be framed.

18. Thus, delay in the trial is neither caused by the prosecution nor by the court. However, the Presiding Officer took every effort to secure presence of accused and, thereafter

also, charge could not be framed.

19. The Honourable Apex Court, in the case of **Gurwinder Singh vs. State of Punjab and anr, reported in AIR 2024 SC 952**, while considering the bail application under provision of the Unlawful Activities (Prevention) Act, 1967, considered “tripod test” (flight risk, influencing witnesses, tampering with evidence) and held that mere delay in trial pertaining to the grave offences as involved in the instant case cannot be used as a ground to grant bail.

20. Similar is the position in the present case as the offence alleged against the applicant is grave one. Insofar as the “tripod test” is concerned, admittedly, the applicant is at a flight risk and there is every reason to apprehend that if he is released on bail, he would not be available for trial. The applicant has already made attempts as to influencing witnesses and tampering of prosecution evidence.

21. In the light of the above, the application deserves to be rejected and the same is **rejected**. However, learned Judge below before whom the trial is conducted shall frame charge without any delay, expedite the trial by securing presence of all

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accused persons by making every endeavour, and dispose of the same as early as possible and preferably within a period of one year from today.

The application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!