



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 225 OF 2024

Budhasingh s/o Jeetsingh Tak
Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Ramnagar, District Chandrapur

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

Court's or Judge's orders

Mr. A. C. Jaltare, Jaltare, Advocate for applicant.
Ms. H. N. Prabhu, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 03/05/2024

1. The applicant came to be arrested on 19.10.2019 in connection with Crime No.1327/2019 registered with Police Station Ramnagar, District Chandrapur for the offences punishable under Sections 143, 147, 148, 302, 364, 364-A, 384, 386, 504, 506, 120-B read with Section 149 of the Indian Penal Code and Section 3 and 25 of the Indian Arms Act.

2. The accusation against the present applicant is on the basis of report lodged by wife of the deceased who alleged that deceased was dealing in contraband liquor and on 18.10.2019, one Bunty telephonically called the informant's husband at Junona square by promising to give him liquor boxes. It is further alleged that informant's husband was forcibly taken to the Junona forest and demanded the

extortion of amount of Rs.1,00,000/-. The informant could organize amount of Rs.70,000/- which she carried with her to the said forest. When she reached at the spot, she saw that her husband lying on the ground and his hands and legs were tied and there were injuries on his body. It is further alleged that upon enquiry, her husband disclosed that the applicant along with the other 6 to 7 persons assaulted him with the stick and fists. The informant gave Rs.70,000/- to the other accused persons and requested that her husband be set free. She was asked to bring Rs.30,000/- till noon and her husband was released. However, when she took her husband to the hospital for treatment, he was declared as a brought dead. On the basis of the said report, police have registered the crime against the present applicant.

3. Present bail application is filed mainly on the ground that though the applicant is arrested on 19.10.2019, but the trial is not yet concluded though there are specific directions of this Court while disposing of the Bail Application bearing No.109/2022 to expedite the trial. He submitted that since last four and half years the applicant is behind bar and also produced on record the roznama which shows that the last witness is examined on 27.07.2023 and thereafter, there is no progress in the trial. To substantiate his contention he placed on record the roznama. The another ground raised by the applicant

is that even on merits there is no substantial evidence against the present applicant to connect him with the alleged offence. As there is no eye witness to the incident that it was the present applicant who has assaulted the deceased. He also invited by attention towards the postmortem report and submitted that the injury sustained by the deceased are in the nature of contusion, abrasion and fracture of sternal lower segment and cause of the death of the deceased is shock and hemorrhage due to the injuries mentioned. He submitted that some of the accused are released on bail by the Sessions Court and some of the accused are released on bail by this Court. He filed on record the copy of the order passed in Criminal Application No.442/2021 by which Tirupati Malliya Pattiwar was released on bail. He submitted that the similar role is attributed to the present applicant. Learned Counsel for the applicant further submitted that now the evidence of informant is already recorded who is the sole witness of the said incident. So there is no apprehension of tampering of the witnesses by the present applicant and on these ground, he prays for releasing the applicant on bail.

4. Learned APP strongly opposed the said application on the ground that there is a prima facie evidence against the present applicant as the informant herself has seen the present applicant along with the deceased when she had been to the

forest to handover the extortion amount. The extortion amount was handed over to the applicant and the other co-accused. The present applicant is also identified during identification as well as before the Court. She submitted that as far as the commencement of the trial and conclusion of the same is concerned, various applications are filed by the accused and therefore, learned trial Court could not conclude the trial and therefore, that cannot be a ground to release the present applicant on bail.

5. After hearing the learned Counsel for the applicant and learned APP for the State. As far as the allegations are concerned, which shows that present applicant and one Bunty who are the abductors abducted the deceased and taken to him in the forest and demanded the extortion amount. The informant had been to the forest to handover the said extortion amount and she found her husband whose hands and legs were tied and he was assaulted as some injuries were there. The informant has not actually seen the present applicant assaulting the deceased, but she has seen the said injuries on the person of the deceased. The informant has named the present applicant and co-accused in the FIR. The informant received the phone call from co-accused Sonusingh Tak. The next reference to unknown associates of Sonusingh Tak is that when the informant visited the jungle along with Sonusingh and Budhasingh 4 - 5 persons were present and they assaulted her

husband by fist and blows. Prior to the said statement the informant states that her injured husband disclosed that he was assaulted by Sonusingh and Budhasingh and 4 - 5 others. The test identification parade is conducted wherein informant has identified the applicant as the accused. As the present application is filed on the ground that delay in trial. Now it is well settled that the applicant cannot be put behind bar and incarcerated for indefinite period if there is an inordinate delay in conclusion of the trial. The liberty of the applicant/accused cannot be curtailed for the indefinite period. Considering the ground raised by the applicant and considering the earlier order passed by this Court in Bail Application No.397/2020 wherein this Court has already observed that it would not be appropriate to go into the minute details of the test identification, what is glaring is that 12 persons were asked to participate in the test identification and the witnesses were asked to identify the persons. It is further observed that even if it is assumed that the informant identified the applicant, there is no material on record to show what role is played by the applicant. Similar is the case regarding the present applicant. Present applicant is one of the abductor and the informant is not the eye witness who has seen the present applicant assaulting the deceased. The another ground is most material that though this Court has directed to expedite the trial, the trial is not concluded. The last witness is examined in July

2023 and thereafter there is no progress in the trial. As observed by the Hon'ble Apex Court in catena of decision that if there is an inordinate delay in the trial the accused cannot be incarcerated for indefinite period by curtailing his liberty.

6. In the present case, the present applicant is behind bar since four and half years and only three witnesses are examined by the prosecution. The roznama which is produced on record also shows that the prosecution could not secure the presence of the witnesses to proceed with the trial after sufficient opportunity is granted. Considering all these facts, the application of the present applicant requires to be considered by considering that there is an inordinate delay in disposing of the trial. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

(i) The application is allowed.

(ii) The applicant **Budhasingh s/o Jeetsingh Tak** shall be released on bail in connection with Crime No.1327/2019 registered with Police Station Ramnagar, District Chandrapur for the offences punishable under Sections 143, 147, 148, 302, 364, 364-A, 384, 386, 504, 506, 120-B read with Section 149 of the Indian Penal Code and Section 3 and 25 of the Indian Arms Act, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall not enter into the Chandrapur district except attending the dates of the trial Court.

(iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(v) The applicant shall attend the proceeding of the trial Court without seeking exemption unless there are exception circumstances.

(vi) The applicant shall furnish his cell phone number and address and the names of his two relatives and their address with address proof.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)