



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

CRIMINAL APPLICATION (BA) NO. 498 OF 2024

Ajay s/o Dharmaji Wasnik 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. P.R. Agrawal, counsel for applicant.

Mr. K.R. Lule, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 02/09/2024.

1. The applicant came to be arrested on 27/08/2020 in connection with Crime No. 108/2020 registered with police station Lohara, District Yavatmal for the offences punishable under Sections 302, 307, 144, 147, 148, 120-B read with Section 149 of the Indian Penal Code, 1860; Sections 4 and 25 of the Arms Act, 1959; Section 135 of the Maharashtra Police Act, 1951.

2. The accusations against the present applicant are on the basis of a report lodged by one Sharad Bondre serving as Police Station Officer, Lohara, District Yavatmal, alleging that on 26/08/2020, he, along with one Devidas Chauhan, was on a two wheeler vehicle and one Hitesh Rathod and Pintu Chauhan were on another motorcycle, and they were returning towards home. At about 1.45 p.m. near Maruti Showroom, a four wheeler vehicle came and gave a dash to the motorcycle. On which, the informant and Devidas were sitting. Due to the dash, they fell down, and their motorcycle was also dashed to the other motorcycle, on which Hitesh and Pintu were sitting, and

they also fell down. At the relevant time, the present applicant along with other co-accused came in a four wheeler, and due to the old grudge against the Devidas Chauhan, they all assaulted Devidas with a knife on the stomach, neck, and hand and caused his death on the spot. On the basis of said report, the police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that since date of arrest, i.e., from 26/08/2020, the applicant is behind bars. There is no progress in the trial, even the applicant has not been produced in jail for the last one year. He further submitted that, even considering the merits of the case, as far as the other co-accused is concerned against whom, the specific allegation is made by the witness, but as far as the present applicant is concerned, a general allegation is made that he was also assaulting the deceased by means of a knife. He submitted that, though charge-sheet is filed before the Court on 19/11/2020, there is absolutely no progress in the trial. The applicant cannot be kept behind bars for an indefinite period.

4. In respect of his contention, he placed reliance in the case of *Javed Gulam Nabi Shaikh vs State of Maharashtra and another* in *Criminal Appeal No. 2787/2024 (arising out of SLP (Cri) No. 3809/2024 reported in 2024 ALL MR(Cri) 2882*, wherein the Hon'ble Apex Court has held right to speedy trial of offenders facing criminal charges is implicit in the broad sweep and content of Article 21. Howsoever serious a crime may be, an accused has a right to speedy trial as enshrined under the Constitution of India.

He further placed reliance on the orders passed in Principal Seat at Mumbai in *criminal Bail Application No. 2244/2023 [Jahid alias Javed Liyakat Ansari vs State of Maharashtra]* decided on 18/12/2023; and *Dattatray Shrikrushna Shejole Versus The State of Maharashtra in Criminal Application (BA) No. 429/2024* decided on 06/08/2024 by this Court.

5. He submitted that, in all these decisions, it is consistently held that the right of speedy trial is enshrined under Article 21 of the Constitution; here the present applicant is behind bar from last four years. There is no progress in the trial. Initially, the application is withdrawn by the applicant, as liberty is granted to move a fresh application in case there is no progress in the trial in the near future. Therefore, he filed an application before the Sessions Court, but the same was rejected by the Sessions Court.

6. Learned APP strongly opposed the said application on the ground that, after lodging of the FIR, the criminal law set into motion, and during investigation, the statements of various eye-witnesses are recorded, wherein the involvement of the present applicant is revealed, which shows that the present applicant has also played a vital part in eliminating the deceased. Considering the gravity of the offence, that the present applicant and other co-accused, due to the old enmity between them, eliminated the deceased, the application deserves to be rejected.

7. He submitted that, as far as the delay is concerned, this factor is to be considered. In light of the fact that chemical analyser reports are not received in time, and there was difficulty with the jail authorities also as far as the production of the accused is concerned, and therefore, trial is not proceeded. In view of that, the application deserves to be rejected.

8. After hearing learned counsel for the applicant and learned APP for the State, perused the investigation papers, from which it reveals that due to the previous dispute between the deceased and the present applicants, the present applicants and the other co-accused restrained the deceased by giving dash to his motorcycle and thereafter assaulted him by means of a knife. In all 21 injuries are found on the person of the deceased, and the cause of the death of the deceased is due to the multiple injuries. There is no dispute as to the fact that the deceased has sustained the injuries on the vital part of the body. Besides the post mortem report, there is direct evidence in the nature of the statements of the eye witnesses, wherein the specific role is attributed to the co-accused, Siddhant Ralekar, against whom it is alleged that he has given a blow on the neck of the deceased. As far as the present applicant is concerned, it is stated that the present applicant was assaulted the deceased. As far as the assault by the present applicant, there is no specific averment that in what manner he was assaulting the deceased.

9. The applicant has also placed on record the earlier order passed by this Court, which shows that considering the nature of the offence, if the trial is not proceeded within one

year, the liberty is granted to the applicant to file a fresh application.

10. In view of the order passed by this court, the applicant has preferred an application for grant of bail before the Sessions Court, however, the Sessions Court has misinterpreted the order and held that there is no specific direction that applicant shall approach to the Sessions Court and rejected the application.

11. As far as the delay is concerned, it reveals from the Roznama that charge-sheet was filed on 19/11/2020 thereafter, it was fixed for framing of the charge, and on several occasions, the trial was adjourned and the charge was not framed. From the Rozanama, it reveals that the accused was not produced from jail, and that was one of the reasons that the charge is not framed, and therefore, there is a delay in a trial.

12. This aspect is now repeatedly considered by the Hon'ble Apex Court in various judgments. Learned counsel for the applicant placed reliance on ***Javed Gulam Nabi Shaikh vs State of Maharashtra*** referred (supra), wherein the Hon'ble Apex Court held that if the State or any prosecuting agency, including the court concerned, has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution, then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

13. In the case of *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs State of Uttar Pradesh in CRIMINAL APPEAL NO. 2790 OF 2024 decided on 18/07/2024* wherein also the issue regarding the speedy trial was considered by the Hon'ble Apex Court and it is held that this Court thereafter proceeded to hold that Section 43D(5) of the UAP Act does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Long incarceration with the unlikelihood of the trial being completed in the near future is a good ground to grant bail.

14. Here in the present case also, the applicant is arrested on 27/08/2020, and thereafter, a charge sheet is filed. From the Rozanama, it reveals that trial was not commenced merely because the accused was not produced, and therefore, the charge was not framed. The Sessions Court has not taken any efforts to secure the presence of the accused before the Court, and the prosecution has also not taken any efforts to secure the presence before the Court. The learned trial court has to take the efforts to secure the presence of the accused through video conferencing also, and the charge can be framed by securing the presence of the accused through video conferencing also.

15. Thus, in view of the observations made by the Hon'ble Apex Court, if the State or any prosecuting agency, including the court concerned, has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution, then the State or any other prosecuting agency should not oppose the plea for

bail on the ground that the crime committed is a serious one. Admittedly, the crime committed is serious, but in view of the observation of the Hon'ble Apex Court and in view of Article 21 of the Constitution, the applicant cannot be kept behind bar for an indefinite period. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order;

- a] The criminal application is **allowed**.
- b] The applicant – *Ajay s/o Dharmaji Wasnik* shall be released on bail, in connection with Crime No. 108/2020 registered with police station Lohara, Yavatmal for the offence punishable under Sections 302, 307, 144, 147, 148, 120-B read with Section 149 of the Indian Penal Code, 1860; and under Section 4 and 25 of the Arms Act, 1959; and under Section 135 of the Maharashtra Police Act, 1951, on executing a PR Bond in the sum of Rs.50,000/- with one solvent surety in the like amount.
- c] The applicant shall not enter into the vicinity of village Lohara, District Yavatmal till the culmination of the trial.
- d] The applicant shall furnish his address, cellphone number(s) names and addresses of his two relatives where he intending to reside after released on bail along with address proof.

- e] The applicant shall not induce, threat or promise to any witnesses who are acquainted with the facts of the present case.
- f] The applicant shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.
- g] Contravention of any of the condition imposed by this court would lead to cancellation of his bail.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]