



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

CRIMINAL APPLICATION (BA) NO.483 OF 2024

(Satendra s/o Rajbahadur Gupta 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. S.P. Bhandarkar, Advocate a/w Mr. A.C. Khadse, Advocate for the
applicant.

Ms K. Bhongade, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JULY 18, 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 11/02/2014 in connection with Crime No.43/2013 registered with Police Station Imamwada, Nagpur for the offence punishable under Sections 302, 354-D read with Section 34 of the Indian Penal Code and Section 3 read with 25 and 27 of the Indian Arms Act, 1959.

2. The accusation against the present applicant is on the basis of report lodged by Sumit Ashok Bele on an allegation that on 17/04/2013 he along with his cousin brother namely Roshan Samrit went to the house of the maternal uncle of Roshan on motorcycle at Umred and on the way Roshan received a mobile call of his friend Komal Thakre, who informed him that two unknown persons wrongfully confined her and asked her name and her mobile number forcefully. It is further alleged that after hearing this, Roshan informed her that he would

immediately come and at about 07.15 p.m. they rushed there. They saw that Komal and one Pratigya were standing near there moped and besides them two persons along with black color Pulsar were standing and therefore, Roshan asked Komal about those persons and she informed about them. Those two unknown persons attempted to flee from the spot and then Roshan chased them and tried to stop their vehicle and to caught hold them. The complainant heard the noise like crackers and therefore, the complainant went towards Roshan and saw that Roshan has received the gunshot injury and those two unknown persons ran away from the spot. On the basis of said incident, the informant lodged the report. During investigation, the involvement of the present applicant is revealed and therefore, he is arrested.

3. Learned Counsel for the applicant submitted that since the date of arrest the applicant is behind bar. There is no progress in the trial. The report of the District Judge is also called and it shows that the charges are not framed against the accused. Thus, more than for 10 years the applicant is behind bar. The applicant cannot be kept behind bar for an indefinite period merely because the offence alleged against them is serious in nature. In support of his contention he placed reliance on ***Union of India Vs. K. A. Najeeb [(2021) 3 SCC 713]*** and ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another (Criminal Appeal No.2787/2024 decided on 03.07.2024).***

4. He submitted that now the consistent view is that irrespective of the offence, if there is no progress in the trial, the applicant/accused shall be released on bail. He submitted that the present application is filed mainly on the ground that though the applicant is arrested on 11/02/2014, the trial is not concluded though the charge-sheet is filed. The charges are not yet framed. He submitted that in view of the decisions of the Hon'ble Apex Court there cannot be a detention of the applicant for an indefinite period. In view of that, the applicant be released on bail.

5. Learned APP strongly opposed the application on the ground that there is a *prima facie* evidence against the present applicant in the nature of direct evidence as well as circumstantial evidence. The eye-witnesses statements shows the involvement of the present applicant in the alleged offence. Now, the trial can be commenced at any time. In view of that, the application deserves to be rejected.

6. I have heard learned Counsel for both the parties. As far as the allegations are concerned which shows that the present applicant is involved in the crime that he has eliminated the deceased due to the previous dispute. The involvement of the present applicant is revealed from the direct evidence as well as the circumstantial evidence. Present application is filed mainly on the ground of incarceration of the applicant for a longer period. The applicant is arrested on 11/02/2014

and since then he is behind bar. The report of the District Judge-10 and Additional Sessions Judge, Nagpur also shows that the charge-sheet was filed against accused No.1 – Gaus Ali @ Raja on 03/09/2013. Accused No.2 – Satyendra @ Rahul Gupta was absconding and said case was committed for trial. Thereafter, the co-accused Satyendra Gupta was came to be arrested on 11/02/2014. The Investigating Officer has filed supplementary charge-sheet against the said accused i.e. Satyendra Gupta on 06/05/2015. The case cannot be proceeded against the present applicant as another crime under the MCOC was pending. Accused No.1 – Gaus Ali @ Raja filed an application for bail and he is released on bail. Again he was taken into custody. Thus, there is no progress in the trial and the charges are yet to be framed. Thus, admittedly for more than 10 years the applicant is behind bar. Learned Counsel placed reliance on the decision of the Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another (supra) wherein the Hon'ble Apex Court in the said decision has considered the catena of decision including ***Hussainara Khatoon v. Home Secy., State of Bihar [(1980) 1 SCC 81]*** and ***Kadra Pahadiya & Ors. v. State of Bihar [(1981) 3 SCC 671]*** wherein it is observed as under :

“The State or complainant prosecutes him. It is, thus, the obligation of the State or the complainant, as the case may be, to proceed with the case with reasonable promptitude. Particularly, in this country,

where the large majority of accused come from and poorer weaker sections of the society, not versed in the ways of law, where they do not often get competent legal advice, the application of the said rule is wholly inadvisable. Of course, in a given case, if an accused demands speedy trial and yet he is not given one, may be a relevant factor in his favour. But we cannot disentitle an accused from complaining of infringement of his right to speedy trial on the ground that he did not ask for or insist upon a speedy trial.”

7. In another recent decision in Union of India Vs. K. A. Najeed (supra) wherein also in para No.15 it is observed by the Hon'ble Apex Court 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) Vs. Union of India reported in (1994) 6 SCC 731***, wherein it was held that under trials 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. The same ratio is laid down in another decision i.e. ***Angela Harish Sontakke Vs. State of Maharashtra [(2021) 3 SCC 723]***, ***Sagar Tatyaram Gorkhe and another Vs. State of Maharashtra [(2021) 3 SCC 725]***, ***Shaheen Welfare***

Association Vs. Union of India and others [(1996) 2 SCC 616].

8. Thus, in a catena of decisions the right of the accused of a speedy trial is identified by the decisions of the Hon'ble Apex Court.

9. Reverting back to the facts of the present case, though the material in the charge-sheet indicate the applicant's participation in the above said crime, however considering the fact that the incarceration of the present applicant as under trial prisoner is more than 10 years and the right of the applicant/accused for speedy trial is definitely affected. Ultimately this is the only answer, which the judicial system can offer to an accused, whose trial is not commenced within four and half years. As a Constitutional Court, nonetheless the duty is cast upon this Court to ensure him his liberty, as a speedy trial has been recognized as integral part under Article 21 of the Constitution of India. In view of that, it would be appropriate to release the applicant on bail by imposing certain conditions. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) The applicant – Satendra s/o Rajbahadur Gupta in connection with Crime No.43/2013 registered with Police Station Imamwada, Nagpur for the offence punishable under Sections 302, 354-D read

with Section 34 of the Indian Penal Code and Section 3 read with 25 and 27 of the Indian Arms Act, 1959, be released on bail on executing a P.R.Bond in the sum of Rs.25,000/- with one solvent surety, in the like amount.

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

(iv) 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.

(v) The applicant shall attend the proceedings before the trial Court regularly without seeking any exemption unless there are exceptional circumstances.

(vi) The applicant shall furnish his cell phone number and address and the names of his two relatives along with the address proof and the address where in intending to reside.

10. The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)