



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

CRIMINAL APPLICATION (BA) NO.512 OF 2024

Sonusingh s/o Jitisingh Tak
Vs.

State of Maharashtra, Through Police Station Officer, 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. S. P. Bhandarkar, Advocate for applicant.
Mr. A. G. Mate, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 09/07/2024

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. Thereafter, the informant's husband was forcibly taken to the Junona forest and demanded the

extortion of amount of Rs.1,00,000/-. The informant any how 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. It is further alleged that the amount of Rs.70,000/- was handed over to the present applicant and other co-accused and she requested to set free her husband. 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 only three witnesses are examined by the prosecution. The last witness is examined in July 2023 thereafter, there is no progress in the trial. To substantiate his contention he placed on record the

progress of the trial. The another ground raised by the applicant is that even on merits, there is no substantial evidence against the present applicant. Even the recovery of the amount is also appears to be doubtful. He submitted that as there is no eye witness to the incident and therefore, entire prosecution case appears to be doubtful. He submitted that on the ground of delay in trial, the other co-accused is already released on bail, in view of that, the present applicant be released 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 amount of extortion is recovered from the present applicant, there is recovery panchnama also drawn at the instance of the present applicant. The present applicant is also identified during identification by the informant and he further submitted that there is a progress in the trial already three witnesses are examined and 6 to 7 witnesses are summoned by the learned Sessions Court. Thus, considering the gravity of the offence, the application deserves to be rejected.

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 one Bunt and the co-accused Budhasingh Jeetsingh Tak are the abductors who abducted the deceased and

taken to him in the forest and the present applicant has demanded the extortion amount. The informant had been to the forest to handover the said extortion amount and it is alleged that it was the present applicant who accepted the said amount. 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 evidence on record further shows that she received the phone call from the present applicant and therefore, she went at the spot of incident. The present applicant as per the prosecution has also identified by the co-accused.

6. Learned Counsel for the applicant mainly raised the ground that the applicant is behind the bars since four and half years. Despite the directions given by this Court, there is no substantial progress in the trial. He submitted that there is absolutely no progress in the trial. He placed reliance on catena of decisions and submitted that the Hon'ble Apex Court, even in serious crimes, considered that delay in trial in serious crimes also entitles the applicant/accused for bail. In support of his contentions, he placed reliance on **Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another (Criminal Appeal No.2787/2024 decided on 03.07.2024)**. The Hon'ble Apex Court in the said decision has considered the catena of decisions including

Hussainara Khatoon Vs. Home Secretary, State of Bihar reported in **(1980) 1 SCC 81** and **Kadra Pahadiya and Ors Vs. State of Bihar** reported in **(1981) 3 SCC 671** and observed that:

“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. Najeeb** reported in **(2021) 3 SCC 713**, wherein also in para No.15 it is observed by the Hon'ble Apex Court. 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 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. The same ratio is laid down in another decision i.e. **Angela Harish Sontakke Vs. State of Maharashtra** reported in **(2021) 3 SCC 723**, **Sagar Tatyaram Gorkhe and another Vs. State of Maharashtra** reported in **(2021) 3 SCC 725**, **Shaheen Welfare Association Vs. Union of India and others** reported in **(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 participation in the above said crime, however considering the fact that the incarceration of the present applicant as under trial prisoner is more than four and half 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 following order:

ORDER

- (i) The application is allowed.
- (ii) The applicant **Sonusingh s/o Jitisingh 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 along with the address proof and the address where in intending to reside.

10. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)