



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

CRIMINAL APPLICATION (BA) NO.673 OF 2024
(Anirudha Laxman Kalbande 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.S. Sheikh, Advocate for the applicant.
Mr. U.R. Phasate, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- OCTOBER 4, 2024.

By this application, the applicant is seeking bail as he came to be arrested on 19/10/2021 in connection with Crime No.255/2021 registered with Police Station Bitargaon, District Yavatmal for the offence punishable under Section 302, 201, 120-B read with Section 34 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by Siddharth Uttam Kalbande on an allegation that the deceased is the brother of the informant. The wife of the deceased and the present applicant were having extra marital relationship, and therefore, they committed the murder of the deceased. On the basis of the said report, police have registered the crime against the present applicant as well as the co-accused.

3. Learned Counsel for the applicant submitted that the applicant is behind bar since 19/10/2021. There is no progress in the trial though approximately three years have been passed. He submitted that on merits also the entire case is based on the circumstantial evidence.

Except the memorandum statement of the present applicant on the basis of which one dupatta was seized which was used for the strangulating the deceased, there is no other material collected during the investigation. There is no material to show that the present applicant and the wife of the deceased were having extra marital relations. He submitted the copy of the roznama which is filed on record shows that there is absolutely no progress in the trial and the applicant cannot be kept behind for an indefinite period. In view of that, he be released on bail.

4. Learned APP strongly opposed the application and submitted that the entire case is based on the circumstantial evidence. During the investigation, the Investigating Officer has recorded the statement of the present applicant and on the basis of the said statement, the incriminating article i.e. dupatta which was used for strangulating the deceased was seized. There are CDR reports which shows that the connection between the present applicant and the co-accused. Thus, considering the gravity of the offence, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the investigation papers as well as the roznama. It reveals from the investigation papers that the entire case is based on the circumstantial evidence and the material circumstance on which prosecution relied upon is the recovery of the incriminating article at the instance of the accused. The roznama filed on record shows that

though charges are framed on 14/12/2023, not a single witness is examined, therefore, report of the District Judge was called. As per the report of the District Judge as the chemical analysis reports are not received by the Court, and therefore, the trial is not proceeded.

6. From the roznama, it appears that Sessions Court has not taken any efforts either to secure the presence of the accused before the Court to proceed with the trial. The prosecution has also not taken efforts to proceed with the trial by examining the other witnesses who are not connected with the muddemal or the chemical analysis reports. Thus, there is an inordinate delay in the trial. The Hon'ble Apex Court in the case of ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another in Criminal Appeal No. 2787 of 2024*** decided on 3rd July, 2024, wherein it is observed 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. In ***Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh in Criminal Appeal no. 2790 of 2024*** decided on 18th July, 2024, wherein also the issue regarding the speedy trial was considered by the Court and it is held by the Apex

Court 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.

7. In the present case, the applicant is behind bar since 19/10/2021. The report of the District Judge shows that as chemical analysis reports are not received the trial is not proceeded. It appears that no efforts are either taken by the State or by the Court to secure the presence of the accused before the Court as well as to obtain the C.A. reports from the Forensic Lab. Considering the observation of the Hon'ble Apex Court, moreover, if the merits of the matter is also considered except the statement of the present applicant as to the recovery of the article, there is no other material to show the involvement of the present applicant in the alleged offence. At this stage, the applicant has made out a case for grant of bail. In that view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order.

(i) The application is allowed.

(ii) The applicant – Anirudha Laxman Kalbande in connection with Crime No.255/2021 registered with Police Station Bitargaon, District Yavatmal for the offence

punishable under Section 302, 201, 120-B read with Section 34 of the Indian Penal Code, be released on bail on executing a 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 vicinity of village Sawaleshwar, Taluka Umarkhed, District Yavatmal, till culmination of the trial.

(iv) The applicant shall attend the concerned police station as and when required for the investigation purpose and shall cooperate with the investigating agency.

(v) 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 as well as the victim.

(vi) The applicant shall attend the proceedings before the Sessions Court without seeking any exemption unless there are exceptional circumstance.

8. The contravention of any of the condition imposed by this Court would lead to cancellation of bail.

9. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)