



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

CRIMINAL APPLICATION (BA) NO.718 OF 2024

Mrunal s/o Girish Bhapkar
Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Sakkardara, District Nagpur

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

Court's or Judge's orders

Mr. S. D. Chande, Counsel for the applicant.
Mr. K. R. Lule, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 18/09/2024

1. The applicant came to be arrested on 23.06.2020 in connection with Crime No.328/2020 registered with Police Station, Sakkardara, District Nagpur for the offences punishable under Sections 342, 302, 120-B, 114, 188, 212 read with Section 34 of the Indian Penal Code and Section 51(b) of the Disaster Management Act and Sections 37(1)(3), 135 and 142 of the Maharashtra Police Act.

2. The accusation against the present applicant is on the basis of report lodged by Aditya Vinod Khadatkhar alleging that on 22.06.2020, he alongwith his brother Gaurav and other family members were sleeping in the house. At 12.00 a.m. one Ajay Mishra called his brother Gaurav and asked him to come out of the house for having Paan Masala. It was further alleged that after some time the said

Ajay came back running to his house and informed that the present applicant and other co-accused are assaulting Gaurav near Shahu Garden. After hearing this, the complainant and his father rushed to the spot where they found that the present applicant and the co-accused were assaulting Gaurav by means of wooden rafter, stone, iron handle. The injured has sustained the grievous injuries and subsequently succumbed to the death. On the basis of the said report police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that after completion of the investigation, the Investigating Officer has filed charge-sheet on 17.09.2020. The charge is framed on 29.09.2022. For more than four years the applicant is behind bar, there is no progress in the trial. He placed on record the copy of roznama which shows that the trial is not commenced as accused is not produced before the Court and from last two years i.e. from framing of the charge, the case is fixed for recording the evidence of the witnesses. He submitted that as far as the merit of the matter is concerned, the applicant is implicated in the alleged offence due to the previous enmity. As far as his role is concerned, it is general allegation against him. Moreover, from last four years the applicant is behind bar, there is no progress in the trial. In view of the observation of the Hon'ble Apex Court in the catena of decisions the right of the

present applicant of a speedy trial is affected. He is entitled for bail. In view of that, he be released on bail.

4. Learned APP strongly opposed the said application on the ground that the deceased was called outside the house. He was taken at the Pan Stall and thereafter, he was assaulted mercilessly which resulted into his death. The alleged incident is witnessed by the informant also. Thus, there is a direct evidence. As far as the involvement of the present applicant is concerned, it is specifically alleged that present applicant has assaulted the deceased by means of iron handle. He submitted that the general diary entry shows after the incident, the applicant and the other co-accused were chased by the police officials and the applicant and other co-accused have not stopped the car and driven the car on the person of the Police Constables, due to which Police Constables have also sustained the injuries. Thus, considering the nature of the offence, the application deserves to be rejected.

5. After hearing the learned Counsel for the applicant and learned APP for the State, perused the investigation papers from which it reveals that the allegation against the present applicant is that he alongwith the other co-accused assaulted the deceased by means of wooden handle, wooden rafter and iron bar which is substantiated by the medical

evidence. During the investigation, it reveals from the postmortem report that the deceased has sustained the head injury and succumbed to the death. As far as the statements of the eye witnesses are concerned, which substantiate the allegation that the deceased was assaulted by the present applicant and other co-accused. The postmortem report shows in all 6 – 7 injuries on the person of the deceased having corresponding injuries i.e. under scalp hematoma, right frontotemporal region as well as depressed comminuted fracture, left temporal region and linear fracture radiating from middle horizontally placed running towards right temporal region, which resulted into the death of the deceased, due to the head injury. Thus, not only the statements of the eye witnesses, but the medical evidence also substantiates the allegation that the deceased was assaulted by the present applicant and other co-accused and the injury sustained by him resulted into his death.

6. The another ground raised by the applicant is that since the date of his arrest i.e. from 23.06.2020 though charge-sheet is filed on 17.09.2020 and charge is framed on 29.09.2022 there is no progress in the trial and not a single witnesses is examined by the prosecution. He also placed on record the copy of the roznama which shows that as the accused was not produced time and again and therefore, trial was not commenced.

7. 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 Hon'ble Apex 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.

8. Here in the present case also the applicant is behind the bar since 23.06.2020. From the certified copy of the roznama it reveals the trial was not commenced merely because the accused was not

produced before the Court though charge was framed. The Court has not taken any efforts to secure the presence of the accused before the Court as well as the prosecution has also not taken any efforts to secure the presence of the accused before the Court. 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 serious. Admittedly, the crime committed is serious but in view of the observations of the Hon'ble Apex Court and in view of the Article 21 of the Constitution, the applicant cannot be kept behind the bar for indefinite period. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

ORDER

- (i) The criminal application is allowed.
- (ii) The applicant **Mrunal s/o Girish Bhapkar** shall be released on bail in connection with Crime No.328/2020 registered with Police Station, Sakkardara, District Nagpur for the offences punishable under Sections 342, 302, 120-B, 114, 188, 212 read with Section 34 of the Indian Penal Code and Section 51(b) of the Disaster Management Act and Sections 37(1) (3), 135 and 142 of the Maharashtra Police Act on executing a PR Bond in the sum of

Rs.50,000/- with one solvent surety in the like amount.

(iii) The applicant shall not enter within the jurisdiction of Sakkardara Police Station, District Nagpur, till the culmination of the trial.

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

(v) The applicant shall not leave the jurisdiction of Nagpur District without prior permission of the Court.

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

(vii) On contravention any of the condition imposed by this Court, the bail granted to the present applicant deserves to be cancelled.

9. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)