



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

CRIMINAL APPLICATION (BA) NO. 803 OF 2024

Mithun @ Mithnya Narayan Chikram
Vs.

State of Maharashtra, Through Police Station Officer, Deoli,
District Wardha

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

Court's or Judge's orders

Mr. M. V. Rai, Counsel for the applicant.
Mr. S. S. Hulke, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 03/10/2024

1. The applicant came to be arrested on 13.10.2021 in connection with Crime No.802/2021, registered with Police Station, Deoli, District Wardha for the offence punishable under Section 302, 120-B, 201, 202 read with Section 34 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by Gajanan Khond, who is the relative of the deceased Vasanta Done. It is alleged that wife of co-accused Namdeo and wife of the deceased being sisters have rights in agricultural land in Survey No.137/1 measuring 1 HR 82 R. and there was a dispute amongst them out of the compensation amount towards the acquisition of the said land. This previous enmity has resulted into the commission of the crime. The co-accused Shantanu Moon hired the present applicant and other co-accused by hatching

the conspiracy and in pursuance of the said conspiracy, the deceased was eliminated by the present applicant and other co-accused. On the basis of the said investigation, the applicant was arraigned an accused. During the investigation, at the instance of the present applicant his blood stained clothes were seized as well as from the CDR reports there were continuous calls between the present applicant and other co-accused Shantanu, and therefore, his involvement revealed. On the basis of the said investigation, the charge-sheet is filed against the present applicant.

3. Heard learned Counsel Mr. Rai, who submitted that the earlier bail application was withdrawn by the applicant. Now the Hon'ble Apex Court has considered the bail application of the co-accused Shantanu Dharampal Moon, who has hatched the conspiracy and allegedly hired the co-accused and the present applicant for execution of the said fact, is released on bail by the Hon'ble Apex Court on the ground of delay. He submitted that as far as the merit of the matter is concerned, except the statement of the co-accused, there is no other material to connect him with the alleged offence. He further submitted that the applicant is behind bar since 13.10.2021, there is no progress in the trial, only one witness has been examined and the applicant cannot be kept behind bar for indefinite period. In view of that, he be released on bail. In

support of his contention, he placed reliance on the order passed by this Court in Criminal Application (BA) No.650/2024 dated 20.09.2024.

4. Per contra, learned APP strongly opposed the said application on the ground that during the investigation, it revealed that the co-accused and the present applicant were the members of the conspiracy and in pursuance of the said conspiracy, due to the previous enmity, co-accused hired present applicant and the other co-accused Amar Babarao Moon and the present applicant and the co-accused have executed the act of eliminating the deceased Vasanta Bhauraoji Done. During the investigation, on the basis of the memorandum statement of the present applicant his blood stained clothes were seized. The CDR report also collected, which shows the continuous communication between the present applicant and the other co-accused. Thus, considering the gravity of the offence that by hatching the conspiracy and engaging the present applicant and the other co-accused, the deceased was eliminated, hence, the application deserves to be rejected.

5. Heard both the sides. Perused the investigation papers, from which it reveals that there was a previous dispute between the wife of the deceased Vasanta Bhauraoji Done and wife of Namdeo Ganpatrao Talvekar being they are sisters

and having their rights in a compensation amount in the agricultural land. During the investigation, the applicant was arrested on the basis of the statement of the co-accused. During the interrogation, the applicant has made a memorandum statement and in pursuance of the said memorandum statement, his blood stained clothes were seized. Thus, as far as the merit of the matter is concerned, there is sufficient material to show the involvement of the present applicant in the alleged offence. The present application is filed only on the grounds of delay in trial. The Hon'ble Apex Court has considered the delay in trial and while releasing the co-accused on bail observed that only one witness is examined. The petitioner is in custody for the last two years and two months and there is no progress in the trial, 26 witnesses are cited and only one witness is examined. Having considered the above and the little possibility of trial getting concluded earlier, released the co-accused on bail.

6. The aspect of the delay is considered by the Hon'ble Apex Court recently in a various decisions **Javed Gulam Nabi Sheikh Vs. State of Maharashtra and another** reported in **2024 SCC OnLine SC 1693**, wherein the accused was prosecuted under the provisions of the Unlawful Activities (Prevention) Act, 1967, **Gudikanti Narasimhulu and others Vs. Public Prosecutor, High Court of Andhra Pradesh, Shri Gurubaksh**

Singh Sibbia and others Vs. State of Punjab, Hussainara Khatoon and others Vs. Home Secretary, State of Bihar, Union of India Vs. K.A. Najeeb and Satender Kumar Antil Vs. Central Bureau of Investigation and another,
the Hon'ble Apex Court observed as under:

"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."

The Court further observed that, over a period of time, the trial Courts and the High Courts have forgotten a very well settled principle of law that the bail is not to be withheld as punishment."

7. Thus, considering the observation of the Hon'ble Apex Court, in the present case also, the applicant in jail since last three years, there is no progress in the trial as only one witness is examined. Considering all these facts and considering the fact that the right of the present applicant of speedy trial is affected as there is a delay in trial, the applicant has made out a case for grant of bail. In view of that application deserves to be allowed. Accordingly, I proceed to pass the following order:

ORDER

- (i) The application is allowed.
- (ii) The applicant **Mithun @ Mithnya Narayan Chikram** shall be released on bail in connection with Crime No.802/2021, registered with Police Station, Deoli, District Wardha for the offences punishable under Sections 302, 120-B, 201, 202 read with Section 34 of the Indian Penal Code, on executing PR Bond in the sum of Rs.50,000/- with one solvent surety in the like amount.
- (iii) The applicant shall attend the Deoli Police Station District Wardha twice in a month on 1st and 15th of every month and the Investigating Officer shall record his presence.
- (iv) The applicant shall not leave the jurisdiction of Wardha District, till the culmination of trial.
- (v) The applicant shall not enter into the vicinity of Bhendare Layout, Savangi Meghe, Wardha, till the culmination of the trial.
- (vi) The applicant shall attend the proceeding before the trial Court without seeking exemption unless there are exceptional circumstances.
- (vii) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)