



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

CRIMINAL APPLICATION (BA) NO.846 OF 2024

(Prem Namdeo Talvekar 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. A.S. Shukla, Advocate for the applicant.
Mr. K.R. Lule, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- OCTOBER 9, 2024.

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 and accused. During the investigation, it reveals that there was a communication between the present applicant and other co-accused and the transcription of the said communication is also collected during the investigation. On the basis of the said investigation, charge-sheet is filed against the present applicant.

3. Learned Counsel for the applicant submitted that the earlier bail application was withdrawn by the applicant and trial is expedited and it was directed that the trial Court shall make every endeavour to dispose of the matter within a period of one year. He submitted that though there is a direction only four witnesses are examined within a period of one year and there is no substantial progress in the trial. 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 merits of the matter is concerned, except the transcription of the communication there is no other material to connect the applicant 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 four witnesses have been examined and the applicant cannot be kept behind bar for indefinite period. In view of that, he be released on bail.

He further submitted that another co-accused in Criminal Application (BA) No.803 of 2024 namely Mithun @ Mithnya Narayan Chikram is already released on bail by this Court on the ground of delay in trial.

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 the other co-accused as well as the present applicant was also the part of the conspiracy and in pursuance of the said conspiracy they have eliminated the deceased. During the investigation, on the basis of the memorandum statement of the co-accused the blood stained clothes were seized of the co-accused. The CDR report also collected, which shows the continuous communication between them. It further reveals that during investigation, transcription of the communication between the present applicant and the other co-accused is also collected.

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. The present applicant is the son of said Namdeo Talvekar.

During the investigation, it further revealed that the present applicant was the member to the conspiracy on the basis of the communication recorded between the present applicant and the other co-accused namely Shantanu. Thus, as far as the merits 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. While passing the earlier order, the applicant when withdrawn the application, direction was given to the trial Court to expedite the trial and dispose of the trial as far as within one year but only four witnesses are examined by the prosecution and 26 witnesses are cited. Having considered the above and the little possibility of trial getting concluded earlier, the other co-accused is released on bail by the Hon'ble Apex Court.

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 [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 is behind bar since 13.10.2021. Despite the direction of this Court, there is no substantial progress in the trial and only four witnesses are examined in all 26 witnesses are cited by the prosecution. Admittedly, the applicant cannot be kept behind bar for an indefinite period. 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:

(i) The application is allowed.

(ii) The applicant – Prem Namdeo Talvekar 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, be released on bail on executing P.R. Bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the concerned police station twice in a month i.e. on 1st and 15th day 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 proceedings before the trial Court regularly without seeking any 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 present case.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*