



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

CRIMINAL APPLICATION (BA) NO.953 OF 2024

Sham Kashirao @ Kashiram Dudhmogare
Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Lonar, District Buldhana

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

Court's or Judge's orders

Mr. S. V. Sirpurkar, Counsel for the applicant.
Mr. Nitin Autkar, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 19/11/2024

1. Present application is preferred by the applicant for grant of bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Crime No.57/2022 registered with Police Station, Lonar, District Buldhana for the offence punishable under Sections 302 and 201 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by the sister of deceased on an allegation that the deceased Kailash was residing along with his wife and children. The wife of the deceased was doing the labour work and at the workplace, she developed the illicit relationship with the present applicant. The said fact came to the knowledge of the deceased and there used to be quarrel between them on that count. The

deceased was addicted to the bad vices like drinking liquor and he has disclosed the said facts to the villagers.

3. It is further alleged that prior to the incident, present applicant had been to the house of the deceased to assault him and he has assaulted him and threatened him. On 03.03.2022 at about 7.30 p.m., when the informant had been to the grocery shop, she had seen the deceased proceeding towards the Mahadev Temple. She has also witnessed that he has followed by the present applicant. On the next day i.e. on 04.03.2022, at about 6.00 p.m. when she had been to her workplace, she received a phone call of her nephew, who has disclosed that the dead body of the deceased was found in the agriculture field of Dinkar Kadale. She immediately rushed to the spot and witnessed the injuries on the person of the deceased and therefore, she lodged the report. On the basis of the said report, police have registered the crime against the present applicant.

4. Heard learned Counsel Mr. Sirpurkar for the applicant, who submitted that in fact, the report which shown to be filed by the sister of the deceased is not the First Information Report, but the First Information Report was received earlier by the investigating agency as one Sahebrao Anna Ingole, who firstly witnessed the dead body of the deceased

in the agriculture field and immediately informed to the police. He further submitted except the circumstance that the informant has seen the present applicant following the deceased and the seizure of the weapons, no other circumstances are on record to show the involvement of the present applicant in the alleged offence. He submitted that the entire case is based on the circumstantial evidence. When the case is based on the circumstance evidence, prosecution has to establish the circumstance which shall unerringly point out towards the guilt of the accused. The mere circumstance that the informant has seen the present applicant following the deceased or the seizure of the weapon at the instance of the present applicant is not sufficient to connect the present applicant with the alleged offence. He submitted that no blood stains were seen on the weapon, which was seized at the hands of the present applicant. There are some stains found on the clothes, which were seized by the police during the investigation, but the muddemal property and the CA reports are yet to be received. The applicant is behind bar from the date of his arrest i.e. on 04.03.2022, there is no progress in the trial and the applicant cannot be kept behind bar for an indefinite period. He submitted that the Hon'ble Apex Court in the catena of decisions had considered this aspect and held that the speedy trial is the right of the present applicant and the said right is affected, then the applicant shall be released on bail.

5. Learned APP strongly opposed the said application on the ground that the circumstances which are not recorded sufficiently show the involvement of the present applicant. The blood stained clothes are seized at the instance of the present applicant. Moreover, the another circumstance that the present applicant was seen following the deceased by the sister of the deceased at this stage, *prima facie* case is made out against the present applicant. The trial is not commenced and the CA reports are not received. Thus, considering the same, the directions can be issued to the trial Court to proceed with the trial or the period can be extended to dispose of the trial and prays for disposal of the application.

6. There is not dispute as to the fact that the entire case is rested on the circumstantial evidence. On perusal of the entire investigation papers, it reveals that prosecution placed reliance on the circumstances like the informant has seen the applicant following the deceased prior to the incident i.e. on 03.03.2022. The another one circumstance on which the prosecution relied upon is the seizure of the weapon at the instance of the present applicant and the blood stained clothes. Whether there were blood stains on the clothes or not is to be ascertained on the basis of the theory. As far as the seizure of the weapon is concerned, no blood stains were found on the weapon which was seized. Admittedly, the

applicant is behind bar since the date of his arrest i.e. from 04.03.2022 and the CA reports are not received.

7. Learned Counsel for the applicant vehemently stated that now in catena of decisions the Hon'ble Apex Court has identified the rights of the accused as to the speedy trial. The Hon'ble Apex Court in the case of **Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another** reported in **2024 SCC OnLine 1693**, by referring the judgment of **Hussainara Khatoon and others Vs. Home Secretary State of Bihar** reported in **1979 AIR 1369** and **Kadra Pahadiya and others Vs. State of Bihar** reported in **(1981) 3 SCC 671** observed as under:

"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 poorer and 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."

8. The another decision in **Union of India Vs. K. A. Najeeb** reported in **AIR 2021 SC 712** wherein also in para No.16 it is observed by the Hon'ble Apex Court that 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 (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.

9. The same ratio is laid down in another decisions namely **Angela Harish Sontakke Vs. State of Maharashtra** reported in **(2021) 3 SCC 723**, **Sagar Tatyaram Gorkhe Vs. State of Maharashtra** reported in **(2021) 3 SCC 725** and **Shaheen Welfare Association Vs. Union of India and another** reported in **(1996) 2 SCC 616**.

10. Thus, in catena of decisions, the right of the accused of a speedy trial is identified by the decisions of the Hon'ble Apex Court.

11. Reverting back to the facts of the present case, though, the material in the charge sheet

indicates the involvement of the applicant in the above said crime. However, considering the fact that there is a delay in trial and the applicant is behind the bar from last two and half years. Till today CA reports are not received and the applicant cannot be kept behind the bar for indefinite period, as the constitutional Court nonetheless the duty is cast upon this Court to ensure his liberty as a speedy trial has been recognized as an integral part of the Article 21 of the Constitution.

12. In view of that, I deem it appropriate to release the applicant on bail by imposing certain conditions. Hence the application deserves to be allowed and accordingly, I proceed to pass following order:

ORDER

(i) The application is allowed.

(ii) The applicant **Sham Kashirao @ Kashiram Dudhmogare** shall be released on bail in connection with Crime No.57/2022 registered with Police Station, Lonar, District Buldhana for the offence punishable under Sections 302 and 201 of the Indian Penal Code, 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 vicinity of village Saraswati, Taluka Lonar, District Buldana, till the culmination of the trial.

(iv) The applicant shall attend the proceeding before the Sessions Court without

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seeking any exemption unless there are exception circumstances.

(v) The applicant shall furnish his cell phone number and address wherein he is intending to reside after he is released on bail along with the address proof.

13. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)