



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

CRIMINAL APPLICATION (BA) NO. 972 OF 2024

Milind Sanjay Dethe 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. M.N.Ali, counsel for applicant.

Mr. H.D. Dubey, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : 12/11/2024.

1. The applicant came to be arrested on 14/12/2018, in connection with Crime No. 931/2018 registered with Police Station Arni, District Yavatmal for the offence punishable under Section 302, 307 read with Section 34 of the Indian Penal Code, 1860.

2. On 14/12/2018, the report came to be lodged by Om Gajanan Ghogle, alleging that at around 1.45 p.m., while he was with his friend Nilesh Bhise near Bangori Complex, one Milind Dedhe, who is known to him, assaulted him with a knife by taking it from his pocket. At that time, though the informant intervened, he was also assaulted and received the knife injuries on his left. At the same time, another co-accused, Gulab Dhakate, started beating Nilesh with an iron rod, and Milind Dethe assaulted Nilesh with a knife. Due to the assault on the trifle reason, the deceased has sustained as many as 27 injuries. Out of which, 14 injuries are attributable to the present applicant. On the

basis of the said report, police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that as far as the involvement of the present applicant is concerned, the recitals of the FIR and the statements of the eye witnesses though shows his role, but he is behind bar since the date of his arrest, and there is no satisfactory progress in the trial, and the trial is not concluded. In view of that, applicant be released on bail, in view of the decision of the Hon'ble Apex Court in the case of *Javed Gulam Nabi Shaikh vs The State Of Maharashtra and another [in Criminal Appeal No 2787 of 2024 (Arising out of SLP (Crl) No 3809 of 204)]*, as well as in the case of *Union of India v. K.A. Najeeb, [(2021) 3 SCC 713]*, wherein by observing that Article 21 of the Constitution applies and the applicant therein are released on bail. In the present case also, the applicant is behind bar since 14/12/2018, the trial is not concluded, in view of that, he be released on bail.

4. Learned APP strongly opposed the said application and submitted that the initial bail application of the present applicant was rejected on its own merits. As far as the delay in trial is concerned, it is noted that there is no progress in trial, and seven witnesses are already examined, and trial is underway. In view of that, the application deserves to be rejected.

5. After hearing learned counsel for the applicant and learned APP for the State, perused the recitals of the FIR as well as the investigation papers. From which it reveals that when the deceased and the informant were proceeding together, at that time, on trifle reasons, there was dispute arose between the present applicant and the other co-accused, and the deceased was assaulted by the present applicant as well as the other co-accused. As far as the injuries sustained by the deceased are concerned, there are 27 in numbers. Out of which, 14 stab injuries are attributed to the present applicant. The statements of eye witnesses also show the involvement of the present applicant in the alleged offence.

6. As as far as the ground raised by the present applicant for the delay in trial is concerned, it reveals that 7 witnesses are already examined by the prosecution, and trial is underway. There is no dispute as to the fact that the Hon'ble Apex Court in the case of ***Javed Gulab Nabi Sheikh*** (supra) wherein on the basis of previous decisions including the decision ***K.A. Najeeb*** (supra) it is observed 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.

7. Moreover, the case of the K.A. Najeeb is already distinguished by the Hon'ble Apex Court in the case of *Gurwinder Singh vs State Of Punjab and another in Criminal Appeal No. 704/2024 decided on 07/02/2024*, wherein in para-32 it is observed by the Hon'ble Apex Court that, the Appellant's counsel has relied upon the case of *K.A. Najeeb* (supra) to back its contention that the appellant has been in jail for last five years which is contrary to law laid down in the said case. While this argument may appear compelling at first glance, it lacks depth and substance. In KA Najeeb's case this court was confronted with a circumstance wherein except the respondent-accused, other co-accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this court's decision to consider bail was grounded in the anticipation of the impending sentence that the respondent-accused might face upon conviction and since the respondent-accused had already served portion of the maximum imprisonment i.e., more than five years, this court took it as a factor influencing its assessment to grant bail. Further, in KA Najeeb's case the trial of the respondent-accused was severed from the other co-accused owing to his absconding and he was traced back in 2015 and was being separately tried thereafter and the NIA had filed a long list of witnesses that were left to be examined with reference to the said accused therefore this court was of the view of unlikelihood of completion of trial in near future. However, in the present case the trial is already under way and 22

witnesses including the protected witnesses have been examined. As already discussed, the material available on record indicates the involvement of the appellant/applicant in furtherance of terrorist activities backed by members of banned terrorist organization involving exchange of large quantum of money through different channels which needs to be deciphered and therefore in such a scenario if the appellant is released on bail there is every likelihood that he will influence the key witnesses of the case which might hamper the process of justice. Therefore, mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail. Hence, the aforesaid argument on the behalf the appellant cannot be accepted.

8. Similar is the fact of the present case, the present applicant is involved in a offence registered under Section 302 of the Indian Penal Code, for which punishment provided is of life imprisonment or capital punishment. As far as the progress of the trial is concerned, the trial is already under going and seven witnesses are already examined, and the rest of the witnesses are in the process of their further examination. The allegation against the present applicant is concerned, that on trifle reason he has assaulted the deceased and deceased has sustained the in all 27 injures, out of which, 14 injuries are attributable to the present applicant. Considering the role attributed to the present applicant, which is vital role, and mere delay in trial

in pertaining to grave offence as in the present case is not sufficient to release him on bail.

In view of the above facts and circumstances, this is not a fit case for use the discretion. Accordingly, I proceed to pass the following order.

The criminal application is **rejected**.

[URMILA JOSHI-PHALKE, J.]