



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

CRIMINAL APPLICATION (BA) NO.996 OF 2024

Nikhil s/o Nareshrao Wankhede

Vs.

State of Maharashtra, Through Police Station Officer, Wardha,
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. A. M. Jaltare, Counsel for the applicant.
Mr. S. V. Narale, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 25/11/2024

1. The applicant came to be arrested on 28.11.2021 in connection with Crime No.1546/2021 registered with Police Station, Wardha, District Wardha for the offences punishable under Sections 147, 148, 302 and 201 read with Section 149 of the Indian Penal Code and Sections 4, 25 and 27 of the Arms Act.

2. The crime is registered on the basis of the report lodged by the wife of the deceased who alleged that on 27.11.2021 at about 10.54 p.m., she has called her husband, at that time, her husband informed that he is at the house of Giri and she heard the altercation of the words between her husband and somebody else. Therefore, she immediately rushed to the house of Pravin Giri and witnessed the co-accused Akash Jaiswal and other

four persons running from the spot holding the weapons in their hands. On visiting the house of said Giri, she witnessed that her husband Manoj is lying in a pool of blood and sustained various injuries on his person. He was immediately taken to the hospital but he was declared dead. On the basis of the said report, police have registered the crime against the present applicant.

3. Heard learned Counsel for the applicant who submitted that as far as the name of the present applicant is concerned, which is not mentioned in the FIR. There was previous enmity between the co-accused Akash Jaiswal and the deceased. After two months when identification parade was held, there is nothing on record to show that till holding the identification parade, the identity of the present applicant was concealed. None of the remand report shows that they were produced by covering the faces before the Court. There is no material in the nature of the entry in the Station Diary that when the applicant was taken out from the lockup, his face was covered. Thus, considering the said fact, the identification parade which was held after two months is not helpful to the prosecution. He submitted that identification parade is held without following the rules. The another aspect of the evidence on which the prosecution relied upon is that the blood stains on Dupatta and the Slipper (footwear) of the present applicant on which the blood stains of blood group of the

deceased were found. He submitted that, it is the manipulated evidence created by the Investigating Officer. Moreover, the applicant is behind bar for more than three years and still charges are not framed. The applicant cannot be kept behind bar for indefinite period. In support of his contention he placed on record the order passed by this Court in **Criminal Appeal No.305/2024 [Shubham Laxminarayan Jaiswal Vs. State of Maharashtra and another] decided on 21.08.2024**, wherein this aspect of delay in trial is considered by this Court and submitted that the trial would take its own time for its final disposal, the applicant cannot be kept behind bar for indefinite period. In view of the various decisions of the Hon'ble Apex Court due to the delay in trial, the right of the present applicant as to the speedy trial is affected. In view of that, the application deserves to be allowed.

4. Learned APP strongly opposed the said application and submitted that during the identification parade, the applicant was identified by the witnesses. There are statements of the witnesses including Komal Manojraj Dhanorkar i.e. the informant and the other witnesses which shows the involvement of the present applicant. At the instance of the present applicant, blood stained clothes are seized. The CA report shows that there were blood stains on the slipper of the present applicant as well as the Dupatta which was seized at the instance of the present applicant. There were 40

injuries on the person of the deceased. Considering the gravity of the offence, the application deserves to be rejected.

5. After hearing both the sides and on perusal of the investigation papers, the involvement of the present applicant is revealed. The weapons as well as the blood stained clothes are seized at the instance of the present applicant. In the CA report, the blood stains of the blood group of deceased are found on the articles which are seized at the instance of the present applicant. Admittedly, there is a delay in trial. As far as the present applicant is concerned, who was arrested on 28.11.2021. One of the ground raised by the applicant is that there is a delay in trial and placed reliance on **Javed Gulam Nabi Shaikh vs. State of Maharashtra and another in criminal Appeal No.2787/2024 decided on 03.07.2024 as well as Union of India Vs. K. A. Najeeb [(2021) 3 SCC 713]**. The Hon'ble Apex Court in the said decision has considered the catena of decisions including **Hussainara Khatoon Vs. Home Secretary, State of Bihar** reported in **[(1980) 1 SCC 81]** and **Kadra Pahadiya and Ors Vs. State of Bihar** reported in **[(1981) 3 SCC 671]** and observed that:

"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 and poorer 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."

6. In another recent decision in **Union of India Vs. K. A. Najeeb [(2021) 3 SCC 713]**, 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. The same ratio is laid down in another decision i.e. **Angela Harish Sontakke Vs. State of Maharashtra [(2021) 3 SCC 723]**, **Sagar Tatyaram Gorkhe and another Vs. State of Maharashtra [(2021) 3 SCC 725]**,

Shaheen Welfare Association Vs. Union of India and others [(1996) 2 SCC 616].

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

8. Here in the present case, the certified copy of the roznama placed on record shows that on several occasions the accused was not produced before the Court by the Jail Authority and the charges were not framed. Since 2021 the matter is fixed for hearing before the trial Court. It further appears that the Court has not taken any efforts to secure the presence of the accused before the Court to proceed with the trial. Even the CA reports are received by the Court, in which the endorsement on the CA report of forwarding the date shows that it was forwarded on 27.04.2022. After receipt of the CA reports also there is no progress in the trial. As observed by the Hon'ble Apex Court in the case of **Javed Gulam Nabi Shaikh** (supra) 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 of India applies irrespective of the nature of crime.

9. In the light of the observation made by the Hon'ble Apex Court, in the present case also no special efforts are taken to proceed with the trial as well as after receipt of the CA report also there is no progress in the trial. Admittedly, the crime committed is serious. The involvement of the present applicant is also revealed from the circumstantial evidence, but in view of the observation of the Hon'ble Apex Court and in view of the Article 21 of the Constitution of India, the applicant cannot be kept behind bar for indefinite period. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(i) The application is allowed.

(ii) The applicant **Nikhil s/o Nareshrao Wankhede** shall be released on bail, in connection with Crime No.1546/2021 registered with Police Station, Wardha, District Wardha for the offences punishable under Sections 147, 148, 302 and 201 read with Section 149 of the Indian Penal Code and under Sections 4, 25 and 27 of the Arms Act, on executing PR Bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

(iii) The applicant shall not enter into the vicinity of Wardha city except attending the proceeding before the trial Court, till culmination of the trial.

(iv) The applicant shall furnish his detailed address where he intends to reside

after releasing him on bail along with address proof.

(v) The applicant shall not leave India without prior permission of the District Court, Wardha.

(vi) The applicant shall not induce, threat or promise any witnesses either physically or through electronic media.

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

(viii) The applicant shall furnish his cell phone number and address with the address proof.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)