



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

CRIMINAL APPLICATION (BA) NO. 1038 OF 2024

Amar @ Amtya s/o Babarao Moon
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. H. D. Dubey, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 04/12/2024

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 offences punishable under Section 302, 120-B, 201 and 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. As per the allegation, wife of the 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 namely Mithun @ Mithnya Narayan Chikram 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 investigation, the applicant was arraigned an accused. During the investigation, at the instance of the present applicant, the blood stained clothes as well as the knives are recovered and after completion of the investigation, the charge-sheet is filed against the present applicant.

3. Heard learned Counsel Mr. Rai, who submitted that the earlier bail application of the present applicant was withdrawn. 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 act, 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 the date of his arrest i.e. from 13.10.2021, there is no progress in the trial, only six witnesses have been examined and the prosecution intends to examine 26 witnesses for which sufficient

time would require. In view of that the applicant be released on bail. He placed reliance on the order passed by this Court in **Criminal Application (BA) No.803/2024 [Mithun @ Mithnya Narayan Chikram] dated 03.10.2024.**

4. Per contra, learned APP strongly opposed the said application on the ground that during the investigation, it reveals that the present applicant and the other co-accused Mithun have executed the act of eliminating the deceased by hatching the conspiracy. During the investigation, on the basis of the memorandum statement of the present applicant incriminating articles are recovered. Thus, considering the gravity of the offence that by hatching the conspiracy the deceased was eliminated, the application deserves to be rejected.

5. After hearing both the sides and on perusal of 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 the co-accused Namdeo Ganpatrao Talvekar being they are sisters and having their rights in a compensation amount, which they have received in respect of the acquisition of the land. During the investigation, the applicant was arrested on the basis of the statement of the co-accused. He made a memorandum statement and in pursuance of the said memorandum statement, the incriminating articles were recovered.

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 other co-accused who hatched conspiracy is released on bail by the Hon'ble Apex Court by observing that there is a delay in trial and while releasing the co-accused it is considered that 26 witnesses are cited and the time will require to conclude the trial and released him 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** reported in **(1978) 1 SCC 240**, **Shri Gurubaksh Singh Sibbia and others Vs. State of Punjab** reported in **(1980) 2 SCC 565**, **Hussainara Khatoon and others Vs. Home Secretary, State of Bihar** reported in **(1980) 1 SCC 81**, **Union of India Vs. K.A. Najeeb** reported in **(2021) 3 SCC 713** and **Satender Kumar Antil Vs. Central Bureau of Investigation and another** reported in **(2022) 10 SCC 51**, 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 in jail since the date of his arrest i.e. from 13.10.2021 i.e. more than three years. Only six witnesses are examined and the prosecution intends to examine 26 witnesses. 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, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

ORDER

(i) The application is allowed.

(ii) The applicant **Amar @ Amtya s/o Babarao Moon** 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 and 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.)