



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

CRIMINAL APPLICATION (BA) NO.1079 OF 2024

Ashant @ Kadu s/o Ashok Wankhede
Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
(Rural) Malkapur, Buldhana

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

Court's or Judge's orders

Mr. G. G. Sahu, Counsel with Gurpeet Singh H. Chandok, Counsel for the
applicant.
Ms. Trupti Udeshi, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 03/12/2024

1. By this application, the applicant is seeking bail in connection with Crime No.237/2022 registered with Police Station Malkapur, District Buldhana for the offences punishable under Sections 302 and 504 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by the father of the deceased namely Padmakar Namdev Wankhede on an allegation that on 19.10.2022 there was a quarrel between present applicant and the deceased on account of sitting on the bench in front of Samaj Mandir. The said quarrel was intervened by the other brothers of the deceased as well as the informant. On 20.10.2022 again at about 6.30 p.m., when he was coming towards the Samaj Mandir, he

witnessed that his son was assaulted by the present applicant by means of knife, due to which the deceased has sustained the injuries on vital parts of the body and succumbed to the death. On the basis of the said report police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that one of the grounds for bail raised in the application is there is an inordinate delay in trial. He invited my attention towards the Roznama filed on record and submitted that the applicant is arrested on 21.10.2022 and the charge-sheet was filed before the Court on 16.01.2023 and within two years there was absolutely no progress in the trial. He invited my attention towards the Roznama which shows that till today, neither the muddemal nor the CA reports are received. The matter was adjourned on several occasions for non-production of accused before the Court. He submitted that the accused cannot be incarcerated in jail for an indefinite period. The another ground raised by him is that the alleged incident has taken place in sudden fight and sudden quarrel. There was a sudden quarrel and in that sudden quarrel, the deceased was allegedly assaulted by the present applicant. He submitted that admittedly, there was neither intention to cause the death of the deceased. The injuries sustained by the deceased are also not on the vital part of the body. Considering now the investigation is completed and

there is an inordinate delay in trial, the applicant be released on bail. In support of his contentions, he placed reliance on the order of this Court passed in **Criminal Appeal No.305/2024 [Shubham Laxminarayan Jaiswal vs. State of Maharashtra and another] dated 21.08.2024** and **Javed Gulam Nabi Shaikh vs. State of Maharashtra and another in criminal Appeal No.2787/2024 decided by the Hon'ble Apex Court on 03.07.2024** and **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh in Criminal Appeal No.2790/2024 decided on 18 July, 2024.**

4. Per contra, learned APP strongly opposed the said application and submitted that the applicant cannot claim the benefit of the exception of sudden fight and sudden quarrel, as the recitals of the FIR itself shows that on earlier date, there was a quarrel between the deceased and the present applicant, and on the next date on 20.10.2022, the applicant came with a preparation holding knife in his hand and caused the death of the deceased by causing the injuries on the vital part of the body. She also invited my attention towards the statements of the eye witnesses and submitted that the involvement of the present applicant revealed in the alleged incident. She submitted that moreover, whether there was an intention to cause death, is a matter of evidence, at this stage, it cannot be said that there was no

intention to cause the death of the deceased. As far as the decisions on which the applicant relied are concerned, she submitted that in the case of **Shubham Laxminarayan Jaiswal** (supra) this Court has considered the facts of the case and the facts of the case shows that against the order of this Court, the applicant therein has approached to the Hon'ble Apex Court and liberty was granted by the Hon'ble Apex Court to the present applicant to approach to this Court for after a period of six months as there was no progress in the trial within the period of six months, therefore this Court has considered the application. She also submitted that as far as the decision of the **Javed Gulam Nabi Shaikh** (supra) is concerned, wherein also the facts of the cited case are different wherein four years incarceration was there and therefore, the Hon'ble Apex Court has considered that aspect.

5. After hearing both the sides and on perusal of the investigation papers, it reveals that as per the First Information Report, there was earlier quarrel between the present applicant and the deceased on 19.10.2022 on account of sitting on the bench. The informant claimed that he is the eye witness of the incident. Learned Counsel for the applicant has invited my attention towards the statement of the eye witness Swapnil Pralhad Bhalerao and submitted that the statement of Swapnil discloses that the first informant came at the spot of the incident, after the

deceased has sustained the injuries and the present applicant fled away from the spot of incident. Thus, if that statement is taken into consideration admittedly, the informant was not the eye witness of the incident. He submitted that if the statement of Swapnil is taken into consideration which discloses that during the sudden fight and sudden quarrel, the deceased has sustained the injuries at the hands of the present applicant allegedly. Thus, he submitted that if that exception is taken into consideration, then admittedly, the deceased has sustained the injuries in a sudden fight and sudden quarrel and if that is to be taken into consideration, then case would cover under the exception and the offence will cover under Section 304 of the Indian Penal Code. Whether it was under the part I or part II is a matter of evidence. On perusal of both the statements i.e. informant and the eye witness Swapnil, admittedly there is some inconsistency. The statement of the informant shows that he witnessed the present applicant assaulting the deceased, but as far as the statement of eye witness Swapnil is concerned i.e. to the extent that the informant came at the spot after the present applicant fled away from the spot of the incident. Admittedly, at this stage, evidence is not to be evaluated and the statements to the extent of contradictions are to be considered at the stage of the trial. The another ground raised by the present applicant is there is delay in trial. Admittedly, the applicant is arrested on 21.10.2022

and charge-sheet is filed on 16.01.2023. The certified copies of the Roznama shows though muddemal is received but CA reports are not received and therefore, trial is not commenced. Now the order passed by the trial Court shows that the Court is vacant. Learned Counsel for the applicant submitted that considering that aspect the applicant cannot be kept behind bars for an indefinite period. This aspect is already considered by this Court in the **Criminal Appeal No.305/2024 [Shubham Laxminarayan Jaiswal vs. State of Maharashtra and another]** (supra) by referring the decision of the Hon'ble Apex Court in **Javed Gulam Nabi Shaikh vs. State of Maharashtra and another** as well as **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh** (supra).

6. In **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh** (supra) wherein also the issue regarding the speedy trial was considered by the Court and it is held by the Apex Court that this Court thereafter proceeded to hold that Section 43D(5) of the UAP Act does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Long incarceration with the unlikelihood of the trial being completed in the near future is a good ground for bail.

7. In the case of **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh** (supra) wherein also the Hon'ble Apex Court has considered the aspect of the speedy trial and it is held that when a trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-undertrial on the ground that the charges are very serious. It is the specific observation of the Hon'ble Apex Court by referring the judgment of **Javed Gulam Nabi Shaikh** (supra) that "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." It is further held that "We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be" and by considering the Article 21 of the Constitution it is observed that "We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution."

8. In the light of the above observations, if the facts of the present case are taken into consideration admittedly, the applicant is arrested on 21.10.2022 i.e. prior to two years and the charge-sheet is filed on 16.01.2023 thereafter the Roznama shows that though witnesses were present the evidence of these witnesses is not recorded as muddemal was not received. The trial Court has not taken any efforts, as far as the production of the accused before the Court is concerned, to proceed with the trial. There is no efforts by the trial Court also as far as the directions for producing the muddemal or CA reports are concerned. Thus, in view of the observations of the Hon'ble Apex Court that 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. Admittedly, the crime committed is serious, and the present applicant in the alleged crime is also involved but as observed by the Hon'ble Apex Court and considering the Article 21 of the Constitution which enshrines the right of the applicant of a speedy trial, the applicant cannot be kept behind bar for the 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 **Ashant @ Kadu s/o Ashok Wankhede** shall be released on bail in connection with Crime No.237/2022 registered with Police Station Malkapur (Rural), District Buldhana for the offences punishable under Sections 302 and 504 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 Bhalegaon, Taluka Malkapur, District Buldhana, till culmination of trial.

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

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

(vi) The contravention of any of the conditions would lead to the cancellation of bail.

9. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)