



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.1134 OF 2024
(Wasimuddin @ Gudduraj Qutuboddin 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. S.V. Sirpurkar, Advocate for the applicant.
Mr. N. Autkar, APP for the State.

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

Heard.

2. By this application, the applicant is seeking bail as he came to be arrested on 25/05/2021 in connection with Crime No.306/2021 registered with police station Barshitakli, District Akola for the offence punishable under Sections 307, 324, 326, 143, 147, 148, 188 read with Section 149 of the Indian Penal Code and Sections 3/25 and 4/25 of the Arms Act, 1959.

3. Learned Counsel for the applicant submitted that earlier bail application of the present applicant bearing Criminal Application (BA) No.1296/2022 is rejected by this Court but now the present application is filed on the ground of delay in trial. The applicant is behind bar since 25/05/2021 i.e. more than 3 years and there is no progress in the trial. He submitted that 25/05/2021 when the brother of the informant had been to Shegaon for the purpose of business of cotton and was returning, the applicant restrained him and allegedly

extorted the amount of Rs.2,92,000/- on the point of the knife from him. This fact is informed by him to his brother as the applicant and the complainant are residing in the same locality but they have not lodged the report regarding the said incident. As per the allegation on 24/05/2021, at about 2.30 p.m. some of the respectable persons of the area gathered near the Baba Seth Ginning Factory, and in the presence of those persons, the applicant and his relatives informed him that informant shall not lodge any report and he will return the amount. However, at about 4.30 p.m. when the informant and his three brothers were in the temple which is near their house, they heard the noise and at the relevant time, the three persons namely – Aminoddin, Zulfoddin, and Tipu came in front of their house and started abusing them. It is further alleged that the present applicant and the other co-accused came along with Guns, Knife, Pipes, and Sword in their hands and assaulted them and in the said incident, the death of the deceased was caused. On the basis of the said report, police have registered the crime against the present applicant and the other co-accused. He submitted that as far as the present applicant is concerned there is no allegation that either he has assaulted or gave any blow either to the deceased or the injured. He submitted that, earlier bail application was rejected by this Court by considering that present applicant was the root cause of the said incident and rejected the said application. As far as the merits of the matter is

concerned, at this stage also there is no material to show that he was involved in the assault; however, considering there is inordinate delay in trial and the applicant cannot be kept behind bar for an indefinite period, he be released on bail.

4. In support of his contention he placed reliance on the order of this Court in ***Criminal Application (BA) No.877/2024 decided on 19/10/2024, Javed Gulam Nabi Sheikh Vs. State of Maharashtra and another [2024 SCC OnLine SC 1693], Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh in Criminal Appeal No. 2790/2024 decided on 18/07/2024.***

5. Learned APP strongly opposed the application and submitted that the initial dispute arose between the present applicant and the brother of the informant. The meeting was held to settle the dispute as there was some monetary transaction between them. On 20/05/2021, it was decided that the applicant will return the amount. However, at about 4.30 p.m., the present applicant came near the house of the informant along with weapons. All the accused persons were holding deadly weapons in their hands and during the incident the death of the deceased is caused. He submitted that considering the gravity of the offence that several persons have assaulted and the death of the deceased namely Mohammad Shakir Abdul Gaffar is caused and the applicant is the root cause of the said incident, the application deserves to be rejected. He

further submitted that as far as the delay is concerned it is not to be attributed to the prosecution as the progress report shows that it is not the prosecution due to whom the trial is delayed. In view of that, the application deserves to be rejected.

6. I have heard learned Counsel for both the parties. Perused the investigation papers. As far as the involvement of the present applicant in the alleged incident is concerned, there is sufficient material to show that it was the present applicant at whose instance the alleged incident has taken place. Though role of assault is not attributed to him but considering that the root cause of the said incident was the present applicant only. On that ground itself the earlier bail application of the applicant was rejected. Now, the applicant has raised the ground that there is a delay in trial and the applicant is behind bar since three and half years. The progress report is also called from the District Judge-1 and Additional Sessions Judge, Akola. From the progress report it reveals that due to the pendency of the old matters its trial was not commenced. It appears that yet charges are to be framed.

7. Learned Counsel for the applicant placed reliance on Javed Gulam Nabi Sheikh Vs. State of Maharashtra and another (supra) wherein 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.”

8. In the case of *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh* (supra) wherein also similar observation is made by the Hon'ble Apex Court by observing 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 to release the accused on bail. In recent order passed by the Hon'ble Apex Court in the case of '***X*** Vs. ***State of Rajasthan & Anr. [Special Leave Petition (Criminal) No. 13378 of 2024]*** dated 27/11/2024 wherein also this aspect is considered and it is observed that it is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed.

9. Considering the consistent decisions of the Hon'ble Apex Court and considering the fact that though crime committed is serious but in view of the observations 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 an indefinite period. Even the charges are not framed in the present case after three and half years of incarceration. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) The applicant – Wasimuddin @ Gudduraj Qutuboddin in connection with Crime No.306/2021 registered with police station Barshitakli, District Akola for the offence punishable under Sections 307, 324, 326, 143, 147, 148, 188 read with Section 149 of the Indian Penal Code and Sections 3/25 and 4/25 of the Arms Act, 1959, be released on bail on executing P.R. bond of Rs.50,000/- with one solvent surety in the like amount.

(iii) The applicant shall not enter into the vicinity of Barshitakli, District Akola till culmination of the trial.

(iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case including the victim either personally or by way of electronic media.

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

10. The contravention of any of the condition would lead to the cancellation of bail.

11. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*