



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

CRIMINAL APPLICATION (BA) NO.1156 OF 2024

(Chhotya @ Dhammapal s/o Nagsen Ingle and anr. 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, Advocate for the applicants.
Ms K. Bhondge, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- DECEMBER 18, 2024.

Heard.

2. By this application, the applicants are seeking bail as they came to be arrested on 26/05/2020 in connection with Crime No.138/2020 registered with police station Civil Lines, Akola, District Akola for the offence punishable under Sections 302, 143, 147, 148, 149, 504, 323, 324, 325, 326 read with Section 34 of the Indian Penal Code.

3. The crime is registered on the basis of the report lodged by Sunanda Sanatan Kshirsagar, who is the wife of one of the deceased on an allegation that on 25/05/2020 at about 9.00 PM, her younger son Mangal had been to answer the nature's call and her elder son was sleeping in the house. At the relevant time she has witnessed the present applicant and other co-accused came by holding sticks in their hand, and therefore, she immediately rushed behind them and inquired with the co-accused Aakash Ingle as to the why they are along with

the sticks in their hand. At the relevant time, he disclosed that they have to see towards his son as he is not behaving properly and then the co-accused Pintya @ Jaisen Ingle has given a blow on the left hand by the iron pipe and the another blow on the head. It is further alleged that the present applicant has also assaulted the deceased Sanatan on his legs by iron pipe and the other applicant have also assaulted by means of stick on her person as well as on the person of the deceased. On the basis of said report, police have registered the crime against the present applicants.

4. Learned Counsel for the applicants submitted that as far as the role of the present applicants is concerned, which is to the extent that they have assaulted the deceased as well as the informant by means of stick i.e. also not a vital part of the body. As far as the death of both the deceased is concerned, which is caused due to the head injury, which was attributed to co-accused Aakash Bimbisar Ingle, who is already released on bail by this Court on the ground of delay in trial. The applicants are behind the bars since the date of arrest i.e. 26/05/2020 and there is no progress in the trial. At present only one witness is brought before the Court by the prosecution and his examination-in-chief is yet to be completed. The applicants cannot be kept behind the bars for indefinite period and considering that the accused to whom the role attributed that he has caused injury to both the deceased on the vital part of the body, is already

released on bail by this Court on the ground of delay in trial. In view of that, the present application deserves to be allowed.

5. Learned APP strongly opposed the said application on the ground that, considering the gravity of the offence that two persons have lost their life in the said incident and the said incident was occurred in furtherance of common object, the present application deserves to be rejected.

6. After hearing both the sides and on perusal of the investigation papers, especially the statement of the eye-witnesses, it reveals that the role attributed to both the applicants is assault by them on the non-vital part of the body of the deceased Sanatan and Vijay as well as on the person of the informant. The another co-accused Aakash is already released on bail, who has caused the death of the deceased. He is released on bail on the ground of the delay in trial. Admittedly, the applicants are behind the bars since 26/05/2020 and the progress report, which was called from the concerned Court shows that there is no substantial progress in the trial. Even, not a single witness's evidence is recorded completely.

7. Learned Counsel for the applicants submitted that now, in a catena of the decisions the Hon'ble Apex Court has considered that the applicant cannot be kept behind bars for indefinite period and placed reliance on the various decisions including the decision in the case of

Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another (Criminal Appeal No.2787/2024 decided on 03.07.2024) wherein by referring the earlier decisions it is 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.”

8. In the subsequent decision, the Hon’ble Apex Court has considered the right of the present applicant enshrined under Article 21 of the Constitution and held that the applicants cannot be kept behind the bar for indefinite period.

9. Reverting back to the facts of the present case, though the material in the charge-sheet indicate the applicants participation in the above said crime; however, admittedly the role attributed to the present applicants shows that the assault by them is on the non-vital part of

the body. Moreover, they are behind bar for more than four and half years and the right of the applicants/accused for a speedy trial is definitely affected. Ultimately this is the only answer which can be offered to an accused whose trial is not commenced within four and half years. As a Constitutional Court, nonetheless the duty is cast upon this Court to ensure them their liberty, as a speedy trial has been recognized as integral part under Article 21 of the Constitution of India. In view of that, it would be appropriate to release the applicants on bail by imposing certain conditions. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) The applicants – 1) Chhotya @ Dhammapal s/o Nagsen Ingle and 2) Jaisen s/o Nagsen Ingle in connection with Crime No.138/2020 registered with police station Civil Lines, Akola, District Akola for the offence punishable under Sections 302, 143, 147, 148, 149, 504, 323, 324, 325, 326 read with Section 34 of the Indian Penal Code, be released on bail on executing P.R. bond of Rs.50,000/- each with one solvent surety each, in the like amount.

(iii) The applicants shall not enter into the vicinity of Kharap (Bu.) Taluka and District Akola, till culmination of the trial.

(iv) The applicants shall attend the proceedings before the trial Court without seeking any exemption unless there are exceptional circumstances.

(v) The applicants shall not induce, threat or promise any witnesses in any manner who are acquainted with the facts of the case either personally or by way of electronic media.

(vi) The applicants shall furnish their Cell phone numbers and the address with address proof with the names of their two relatives with their address and Cell phone number before the Court.

(vii) The applicants shall furnish their addresses where they are intending to reside after releasing them on bail before the Court.

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.)