



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

CRIMINAL APPLICATION (BA) NO. 427 OF 2024
Deepak Ramkrushna Ghanchekar @ Ghanchakkar
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

Shri A. S. Mardikar, Senior Advocate a/w. Shri A. R. Rawlani,
Advocate for applicant.
Shri D. V. Chauhan, Senior Advocate and Public Prosecutor a/w. Shri N. B.
Jawade, APP for non-applicant/State.
Shri Anirudh Ananthakrishnan, Advocate for assist to Prosecution.

CORAM :- M. W. CHANDWANI, J.

DATED :- 21.08.2024

Heard.

2. By the present application, the applicant seeks bail in connection with Crime No. 18/2023 registered with Police Station, Hingna, Nagpur for the offence punishable under Sections 302, 142, 147, 148, 149, 504, 212, 109 and 323 read with 34 of the Indian Penal Code (IPC); Sections 3, 7, 25 and 27 of the Arms Act and Sections 37 and 135 of the Maharashtra Police Act.

3. The prosecution case is that on 08.01.2023, the applicant committed murder of deceased- Avinash Ghumde by means of firearms. It is the case of the prosecution that the deceased had suspected character of

Shivani, the co-accused and wife of the applicant. During the dispute at her house, Shivani called the applicant. The applicant beat up the deceased and also fired Gun shot on the deceased twice killing him in the house. The applicant alongwith other co-accused fled away from the spot i.e. from the house, leaving behind the dead body. On information, the informant (the father of the deceased), went to the house of the applicant and found Avinash dead in the house of the applicant. The matter was reported to the Police. The applicant and other co-accused including Shivani were arrested and the charge-sheet came to be filed.

4. Shri A. S. Mardikar, learned Senior Advocate appearing on behalf of the applicant would submit that the deceased- Avinash was a history-sheeter and various cases had been registered against him. He was even facing criminal cases including allegations of murder. All the other co-accused have been released on bail either by the Court of Sessions or by this Court. It is only the applicant, who is behind the bar since the date of his arrest i.e. since last one year and nine months. Even the charge in the trial has not been framed till date. According to him, though there are eye-witnesses to the incident but, considering the fact that all other accused have been released on bail and the circumstances in which the incident occurred, the applicant is entitled for bail.

5. The learned Senior Advocate for the applicant vehemently submitted that the applicant is in custody since last one year and nine months and there is a long period of incarceration, particularly when even the trial has not commenced, the applicant has been deprived of his right of speedy trial. According to him, it is the duty of the State to protect the fundamental right of the accused to have a speedy trial as enshrined under Article 21 of the Constitution of India. Considering the stage of trial, which has not yet begin, the applicant is entitled for bail.

6. To buttress his submission, he seeks to rely on the recent decision of the Supreme Court in the case of ***Manish Sisodia Vs. Directorate of Enforcement [2024 SCC Online SC 1920]***, wherein the Supreme Court, while dealing with the bail application of ex-minister, who was facing charges under the provisions of the Prevention of Corruption Act, IPC as well as under the provisions of Prevention of Money Laundering Act, 2002, has observed that right of speedy trial and right to liberty are sacrosanct rights. On denial of these rights, the Trial Court and High Court ought to have given due weightage to these factors. Reliance is also placed on the case of ***Union of India Vs. K. A. Najeeb [(2021) 3 SCC 713]***, wherein in para no. 15, the Supreme Court has held as under:-

“15. 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 v. Union of India) (1994) 5 SCC 731, 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. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.”

7. It is further submitted that in the case of ***Jalaluddin Khan Vs. Union of India [2024 SCC Online SC 1945]***, relied upon by the learned Senior Advocate appearing for the applicant, the Supreme Court has held that when a case is made out for grant of bail, the Court should not have any hesitation to grant bail and emphasized on the principle “Bail is the rule and jail is an exception”.

8. Conversely, Shri D. V. Chauhan, learned Senior Advocate and Public Prosecutor appearing for the State vehemently objected the application on the ground that apparently, there is *prima facie* material on record, which goes to suggest the complexity of the present applicant. According to him, there is direct evidence, which *prima facie* goes to suggest that the applicant was actively involved in the crime. He submitted that there are eye-witnesses to the alleged incident, who

categorically stated the role played by the present applicant i.e. he shot two bullets by firearms on the deceased and killed him. According to him, the other co-accused, who have been released on bail by the Court of Sessions as well as by this Court, were having different role, whereas, the charge-sheet shows that key role in killing the deceased is played by the present applicant by shooting him with firearms, as a result of which he died.

9. Countering the argument of the applicant regarding his entitlement for bail on the ground of delay in conducting the trial, Shri Chauhan, learned Senior Advocate and Public Prosecutor vehemently submitted that there is nothing on record which suggests that delay has been caused by the prosecution and not by the accused persons. According to him, there are almost 12 accused persons, who are put on trial. The allegations against the applicant is of committing the grave offence of murder, only 1½ year has passed and it is not the case that the trial is not being proceeded for a substantial period of 3/4 years. He further submitted that the applicant was also involved in various criminal offences, though he might have been acquitted in those offences. According to him, there would be a threat to the society as well to the witnesses if the applicant is enlarged on bail. Therefore, he sought rejection of the bail.

10. Perusal of the First Information Report goes to show that there is evidence of three eye-witnesses,

who have in categorical terms stated that the applicant shot firearms on the deceased, who sustained two bullet injuries and died. There is recovery of a revolver and blood stained clothes of the accused at his instance. The post-mortem report also shows the cause of death as firearm injury. Thus, there is ample material on record against the applicant to connect him with the alleged offence.

11. The ground of parity is also claimed by the applicant. It is a matter of record that other accused have been enlarged on bail either by the Court of Sessions or by this Court. But, the fact remains that the vital injury i.e. shooting by firearms is attributed only to the present applicant, as a result of which, the deceased died. The applicant fails to point out similarity between role played by him and the role attributed by the prosecution to those accused. Rather, the record suggests that the role assigned to the applicant is different than the role assigned to the co-accused, who were already released on bail.

12. It is true that under-trial cannot be indefinitely detained pending the trial and the accused has a right of speedy trial. If the accused had suffered incarceration for a significant period of time then the Court would ordinarily be obliged to enlarge him on bail as held by the Supreme Court in the cases relied upon by the learned Senior Advocate appearing on behalf

of the applicant. However, nothing has been placed on record to show that inspite of co-operation by the accused/the applicant, the trial could not begin before the Trial Court while applying for bail before it. That apart, the question remains as to what is a significant period for which the delay in trial would entitled the accused to be released on bail. Certainly, it will depend upon the fact of each case depending upon the nature of allegations for which the accused is charged and the severity of punishment. Reference can be made to the case of ***Dilawar Vs. State of Haryana [(2016) 16 SCC 521]***, wherein the Supreme Court, in para no. 7 of the decision, has observed as under:-

“7. It is not necessary to refer to all the decisions of this Court articulating the mandate of the Constitution that there is implicit right under Article 21 for speedy trial which in turn encompasses speedy investigation, inquiry, appeal, revision and retrial. To determine whether undue delay has occurred, one must have regard to nature of offence, number of accused and witnesses, workload of the court and the investigating agency, systemic delays. Inordinate delay may be taken as presumptive proof of prejudice particularly when accused is in custody so that prosecution does not become persecution. Court has to balance and weigh several relevant factors. Though it is neither advisable nor feasible to prescribe any mandatory outer time limit and the court may only examine effect of delay in every individual case on the anvil of Article 21 of the Constitution, there is certainly a need for in-house mechanism to ensure that there is no undue delay in completing investigation. This obligation flows from the law laid down by this Court inter-alia in Maneka Gandhi versus Union of India (1978) 1 SCC 248, Hussainara Khatoon (I) versus State of Bihar (1980) 1 SCC 81, Abdul Rehman Antulay versus R.S. Nayak (1992) 1 SCC 225 and P. Ramachandra Rao versus State of Karnataka (2002) 4 SCC 578.”

13. In the case of ***Manish Sisodia*** (supra), the accused was facing charges under the provisions of the Prevention of Corruption Act, 1988 and Prevention of Money Laundering Act, in that scenario 17 months of incarceration was treated as a significant period of custody at the pre-trial stage. Whereas herein, the applicant who is facing serious charges of committing murder cannot claim 1½ year period as a significant period to claim bail on account of delay in trial. Of course, this will not be the authority for the prosecution to claim that trial may not begin for 1½ years. Obviously, endeavor should be made for timely trial as far as possible, but just because the trial could not commence for one or the other reason for 1½ year, the accused facing charges of serious offence like murder, should be released on bail solely on the ground that there is a little delay in commencement of the trial. Thus, the application fails on all counts.

14. Accordingly, the application is rejected with liberty to the applicant to move the application for bail if the trial does not commence within six months.

(M. W. CHANDWANI, J.)