



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

CRIMINAL APPLICATION (BA) NO.476 OF 2024

(Sagar s/o Prakash Kothale 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. N.R. Tekade, Advocate for the applicant.
Mrs. M.A. Barabde, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- AUGUST 29, 2024.

The applicant came to be arrested on 28/12/2020 in connection with Crime No.427/2020 registered with Police Station MIDC, Akola for the offence punishable under Sections 302 and 394 read with Section 34 of the Indian Penal Code and Sections 3, 5, 7, 25, 27(1) and 27(3) of the Arms Act, 1959.

2. The crime is registered on the basis of the report lodged by Rajesh Bapurao Bhange. From the report it reveals that one Gopal Agrawal was intercepted by two unknown persons and the pillion rider of the motorcycle and the pillion rider of the motorcycle snatched the bag of the cash from the said Gopal Agrawal. When the Gopal Agrawal tried to escape himself and ran away from the spot along with the complainant the said Gopal Agrawal was found injured as the bullet was fired towards him and he succumbed to the injuries. On the basis of said report, police have registered the crime against the unknown persons. During the investigation, the involvement of the

present applicant and other co-accused revealed. As per the prosecution case, present applicant is the person who fired the bullet towards said Gopal Agrawal and caused his death. On the basis of said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that as far as the present applicant is concerned entire case is based on the circumstantial evidence. Though applicant is unknown to the informant and other prosecution witnesses he was not placed for the test identification parade. He further submitted that except the recovery of some amount and recovery of firearm on the basis of his confessional statement recorded under Section 27, there is no other material to connect the present applicant with the alleged offence. He submitted that though prosecution claims that the amount was recovered from the present applicant but the panchnama shows that it was recovered from one Radheshyam Metkar. The statement of said Radheshyam Metkar shows that the amount was not directly transferred or handed over by the present applicant to him but allegedly present applicant has given the said amount to one Kamal and Kamal has transferred the said amount to said Radheshyam. Thus, this evidence is also not sufficient to connect the present applicant with the alleged offence. He submitted that moreover the applicant is behind bar since the date of his arrest i.e. 28/12/2020 which is more than three and half years and there is not substantial progress in the trial. Till

today only four prosecution witnesses have been examined and out of them the material witness Rajesh Bhanghe has not supported the prosecution case. All other co-accused are already released on bail.

4. In support of his contention he placed reliance on the decision of the Hon'ble Apex Court in the case of *Prem Prakash Vs. Union of India in SLP (Crl.) No.5416 of 2024* wherein the Hon'ble Apex Court has considered the aspect of delay in trial and referred its earlier decision and the applicant therein was released on bail. He submitted that here also the entire case is based on circumstantial evidence. One of material witness has not supported the prosecution case, Moreover, there is an incarceration of the present applicant for more than three and half years. Considering all these aspects the applicant be released on bail.

5. Learned APP strongly opposed the said application on the ground that the applicant is the person who fired the bullet towards the deceased. The death of the deceased is caused due to firearm injury. Column No.17 of the postmortem report shows that deceased has sustained the entry wound as well as the exit wound and the cause of death of the deceased is haemorrhage and shock due to firearm injury. She also invited my attention towards the panchanama which shows that the amount of Rs.60,000/- was recovered from one Radheshyam Metkar to whom the applicant has paid the amount. She also

invited my attention towards the statement of said Radheshyam Metkar and submitted that considering the entire transaction and the manner in which the offence is committed, the application deserves to be rejected.

6. I have heard learned Counsel for both the parties. Perused the investigation papers. Admittedly, the FIR is lodged against the unknown persons. During the investigation, the involvement of the present applicant is revealed. Present applicant and other co-accused are arrested. As far as the other co-accused are concerned who are already released on bail. As per the prosecution case, the applicant is the prime accused who has fired the bullet on the deceased and deceased died due to the firearm injury. The applicant is arrested on 28/12/2020 and since then he is behind bar. The report of the concerned District Judge is called which shows that four witnesses have been examined till date and witness summons has been issued for examination of the further witnesses. As far as the merits of the matter is concerned except the panchanama showing that the amount of Rs.60,000/- was recovered at the instance of one Radheshyam Metkar to whom present applicant has paid the amount and his statement. There is no other direct evidence to connect the present applicant with the alleged offence. The prosecution also relied upon his statement under Section 27 of the Indian Evidence Act and submitted that at the instance of the present applicant the incriminating weapon is recovered as well as the amount is recovered. On perusal of the statement of the

Radheshyam Metkar it reveals that the present applicant has not given the amount directly to him but it is alleged that present applicant has handed over the amount to one Kamal and said Kamal has transferred the said amount to Redheshyam Metkar. Thus, the statement of said Radheshyam Metkar is also not much helpful to the prosecution. As far as the evidence of Rajesh Bapurao Bhangе who is examined before the trial Court and who is the eye-witness of this incident has not supported the prosecution case.

7. Admittedly, the applicant is behind bar since last three and half years, and therefore, the learned Counsel relied upon the decision of Prem Prakash Vs. Union of India (supra). The Hon'ble Apex Court in earlier decision also in ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and anr. [2024 SCC online 1693]*** by referring the judgment of ***Hussainara Khatoon and ors. Vs. Home Secretary, State of Bihar [1979 AIR 1369]*** and ***Kadra Pehadiya and ors. Vs. State of Bihar [(1981) 3 SCC 671]*** observed as under :

“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 poorer and 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 another recent decision in ***Union of India Vs. K. A. Najeeb [AIR 2021 SC 712]*** wherein also in para No.15 it is observed by the Hon’ble Apex Court that :

*“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) 6 SCC 731** wherein 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.”*

9. The same ratio is laid down in another decision i.e. ***Angela Harish Sontakke v. State of Maharashtra [(2021) 3 SCC 723]***, ***Sagar Tatyaram Gorkhe v. State of Maharashtra [(2021) 3 SCC 725]*** and ***Shaheen Welfare Association v. Union of India and ors. [(1996) 2 SCC 616]***

10. Thus, in the catena of decisions the right of the accused of a speedy trial is identified by the decisions of the Hon'ble Apex Court.

11. Reverting back to the facts of the present case though the material in the charge-sheet indicates the participation of the applicant in the above said crime however, considering the fact that the bail cancellation of the present applicant is as under trial prisoner is more than three and half years and the right of the accused for speedy trial is definitely affected. Ultimately this is the only answer which the Court can offer to an accused whose trial is not commenced within three and half years. As the Constitutional Court, nonetheless the duty is cast upon this Court to ensure him his liberty, as a speedy trial has been recognised as an integral part under Article 21 of the Constitution of India.

12. In view of that, it would be appropriate to release the applicant on bail by imposing certain conditions. Hence, the application deserves to be allowed. Accordingly, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant - Sagar s/o Prakash Kothale in connection with Crime No.427/2020 registered with Police Station MIDC, Akola for the offence punishable under Sections 302 and 394 read with Section 34 of the Indian Penal Code and Sections 3, 5, 7,

25, 27(1) and 27(3) of the Arms Act, 1959, be released on bail on executing P.R. bond in the sum of Rs.25,000/- with one surety in the like amount.

(iii) The applicant shall not enter into the vicinity of Akola city except attending the dates of the proceedings before the Sessions Court, till the culmination of the trial.

(iv) The applicant shall not induce, threat or promise any witnesses in any manner who are acquainted with the facts of the case.

(v) The applicant shall not leave the jurisdiction of the Akola district without prior permission of the Court.

(vi) The applicant shall furnish his Cell phone number and address where he is intending to live after he is released on bail along with the address proof.

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

13. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)