



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 2156 OF 2024

Karan s/o Chandrpalsingh Gaherwal,
Aged 33 Years, Occu: service,
R/at post Halgi, Tq. Shirur Anantpal,
District Latur,
At present in Central Jail, Latur.

... Applicant
[Accused no.4]

Versus

The State of Maharashtra,
Through The Police Inspector,
Police Station, Shivaji Nagar,
Latur, District Latur.

... Respondent

**WITH
CRIMINAL APPLICATION NO. 4706 OF 2024
IN
BAIL APPLICATION NO. 2156 OF 2024**

Baburao s/o Sidram Chavan
Age : 64 years, Occ: Pensioner,
R/o: Prakash Nagar, Latur.

... Applicant

Versus

1. The State of Maharashtra
2. Karan s/o Chadrapalsing Gaherwal
Age : 33 years, Occ: Service,
R/o: At Post Halgi, Tq. Shirur Anantpal,
District Latur.

... Respondents

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Ms. Poonam V. Bodke Patil, Advocate for the Applicant in
BA/2156/2024.

Mr. N. D. Batule, APP for Respondent-State in both Applications.

Mr. Sachin S. Panale, Advocate for the Applicant in
CriAppln/4706/2024.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 05.02.2025

Pronounced on : 07.02.2025

ORDER :

1. Criminal Application No. 4706 of 2024 is at the instance of the father of deceased seeking permission to assist learned APP during hearing of the Bail Application. For the reasons mentioned in the application, the applicant is permitted to assist learned APP. Criminal Application No. 4706 of 2024 is accordingly disposed off.

2. Instant successive bail application is for grant of regular bail on account of applicant's arrest in crime no. 160 of 2018 registered with Shivaji Nagar Police Station, District Latur for the offences punishable under Sections 302, 120-B r/w 34 of IPC and Sections 3 and 25 of the Arms Act.

3. Heard both sides.

4. Primary grounds pressed into service for grant of bail are that, case is based on circumstantial evidence. **Secondly**, out of eight accused, seven are already granted bail and therefore ground of parity is available to the applicant. **Thirdly**, there is no foundation to the

theory of prosecution about contract killing and applicant being hired. Last and the important point which is emphasized is that, applicant is behind bars since 26.06.2018 and since more than six years he is behind bars and though trial has commenced, it is proceeding at a very slow pace. Therefore, in view of judgment of the Hon'ble Apex Court in the case of *Javed Gulam Nabi Shaikh v. The State of Maharashtra and others* [Cri. Appeal No. 2787/2024 decided on 03.07.2024], it is urged that applicant is entitled for bail.

5 Learned APP as well as learned counsel for the intervenor have both primarily opposed the bail application on the ground that offence is serious. That, there is overwhelming evidence and according to learned APP, now trial is already underway and more than half of the witnesses have been examined and in view of report received from the learned trial court, trial would itself get concluded in the coming few months.

6. Perused the FIR which is at the instance of cousin brother of deceased Avinash. He has reported police that his cousin brother was running tuition classes for 11th and 12th standard named as 'Step By Step Classes' and 'Disha Classes'. That, there was another professional rival by name Motegaonkar. There were differences on account of

engagement of another teacher, namely, Rao. That, coupled with professional rivalry, there were also same political differences and in above backdrop, it is alleged that on 24.06.2018, around 12.30 in the night deceased Avinash was shot dead near Shivaji School while he was in his car.

7. As stated above, applicant was arrested on 26.06.2018. Papers show that out of eight accused, almost all other accused are beneficiaries of regular bail. Learned counsel has invited attention of the court to the very recent order of the Hon'ble Apex Court dated 17.10.2024 passed in Special Leave to Appeal (Crl.) No(s).12573/2024 by which, co-accused namely Akshay Bhivaji Shendge was granted regular bail. The central and focal point of the argument put forth, as stated above, is that applicant is behind bars since more than six years. Though trial commenced in the year 2018, till date only half of the witnesses are examined and as such, there are no immediate prospects of matter getting concluded and being under-trial long incarceration has adversely affected fundamental right of the applicant to seek speedy trial. Primarily on above grounds, though previous applications were turned down by learned trial Judge as well as this Court, present application has been pressed into service.

8. In view of above submissions, this Court had called for report of learned Additional Sessions Judge, Latur who is seized with the very sessions case and this Court is in receipt of report dated 01.02.2025, wherein it has been conveyed by the learned trial Judge that he is transferred from Nashik to Latur on 05.06.2023 and that prior to he taking over since 06.06.2023, matter was part heard. Learned trial Judge has also conveyed that there are 65 witnesses proposed to be examined by prosecution and out of such witnesses, 34 witnesses have already been examined till date and further, summons were issued to the Investigating Officers. However, he has further communicated as under :

“If they will remain present, and recording of their evidence will be completed, then the matter will get adjourned for recording statements of accused persons. Thereafter, it will be at the stage of final arguments. There are five advocates representing the accused persons who may advance their respective arguments thereafter.”

9. That apart, learned trial Judge has also brought to the notice of this Court the strength of files before him, including he to be assigned with all bail applications of five police stations as well as matters of

remand under Prevention of Corruption Act and having 13 Police Stations under his jurisdiction, coupled with administrative responsibilities and finally, in the concluding paragraph, learned trial Judge has conveyed as under :

*“4. In the circumstances, considering the overburden of the work, adhering to convenience of concerned advocates, in granting adjournments and after closing of evidence, it may take **“at least”** 03 months to complete the trial.”*

10. Therefore, on carefully going through the above report of learned trial Judge, it is apparent that out of 65 witnesses, only 34 witnesses are examined till last date. The above report also goes to show that contingencies are expressed by learned trial Judge that “if” Investigating Officers remain present and if their evidence is recorded, then, in such eventuality, he has expressed his ability to reach to the final stage of arguments. In the concluding para, learned trial Judge has also expressed mere possibility by conveying that it may take **at least** three more months to complete the trial. Taking such candid report into consideration, it is clear that even learned trial Judge has expressed his inability to give any concrete schedule which would be required for conclusion of trial. Therefore, it is gathered that there are no immediate prospects of matter coming to an end as there are five

distinct counsels representing distinct accused and there arguments would be heard, followed by that of learned APP, and there is no calender or schedule drawn yet to this extent.

11. As stated above, applicant is behind bars since 26.06.2018. Again, very recently, the Hon'ble Apex Court, while granting bail to co-accused Akshay Bhivaji Shendge, in para 2, has emphasized that conclusion of trial will take some more time and that, petitioner is already in custody for more than six years. Therefore, in true sense, even case of present applicant squarely falls in the similar context. Case of prosecution is that applicant and said co-accused Akshay were together, i.e. Akshay was rider and present applicant was pillion rider and accusations are that deceased was shot at while he was in the car. Therefore, in view of order of Hon'ble Apex Court about fundamental right of accused for speedy trial and the practice of long incarceration being deprecated from time to time, six years detention during trial is definitely a matter of concern and on such sole ground, applicant succeeds. Even otherwise, case is, as submitted, based on circumstantial evidence. Hence, I proceed to pass the following order :

ORDER

I. The application is allowed.

II. Applicant Karan s/o Chandrpalsingh Gaherwal, be released on bail in connection with Crime No. 160 of 2018 registered with Shivaji Nagar Police Station, District Latur, on executing Personal Bond of Rs. 15,000/- with one surety in the like amount, on the following conditions :

- (a) The applicant shall not tamper prosecution evidence.
- (b) The applicant shall not leave Latur Town till conclusion of trial without prior permission of the court.
- (c) The applicant shall attend the concerned Police Station twice in every week i.e. on every Monday and Thursday between 11.00 a.m. to 2.00 p.m. till conclusion of trial.
- (d) The applicant shall attend each and every effective date before the trial court.

[ABHAY S. WAGHWASE, J.]

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