

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.566 of 2022

Sachin Prakashrao Andure, Age 34 years,
Occ.Service, R/o.Near Jain Temple,
Rajbajar, Aurangabad. Applicant
versus
The State of Maharashtra Respondent

WITH
INTERIM APPLICATION NO.3674 OF 2024

Dr.Megha Pansare Intervenor

In the matter between :
Sachin Prakashrao Andure Applicant
versus
The State of Maharashtra Respondent

Mr.Niteen Pradhan with Mr.Virendra Ichalkaranjekar, Mr.Shahen Pradhan, Mr.Danish Patel, Ms.Shambhavi Desai i/by Ms.S.D.Khot, Advocates for Applicant.

Mr.Tanuj Kushare i/by Abhay Nevagi & Associates for Intervenor.

Ms.Geeta P.Mulekar with Ms.Veera Shinde, APP, for State.

API Somnath Shendge and HC Lokesh Raskar, present ATS officers present.

CORAM : ANIL S.KILOR, J.

Date of Closing the Order : 12th December 2024

Date of Pronouncing the Order : 29th January 2025

PC :

1. Heard.

2. By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No.39 of 2015

registered with Rajarampuri Police Station, Kolhapur, for the offences punishable under Sections 120(B), 302, 307 r/w 34 of the Indian Penal Code r/w Sections 3(1) r/w 25(1B)(A) r/w Sec.5 r/w Sec.27 of Indian Arms Act.

3. The Applicant is accused no.10 and was arrested on 6th September 2019. The alleged incidence is dated 16th February 2015. The deceased died on 20th February 2015 in the hospital. The accused was earlier arrested in C.R No.154 of 2013 i.e. in the case of murder of Shri Dabholkar.

4. In the present crime the investigation was handed over to Special Investigation Team vide administrative order of the Government of Maharashtra, who have filed five charge sheets in the present matter. After the present crime was monitored and various orders passed by this Court, further investigation was entrusted to ATS, Pune.

5. As per the FIR filed by the informant Mukund Dinkar Kadam it is stated that the informant's neighbour Shashikant Jog informed him that Mr. & Mrs.Pansare have been fired on the road. Then he rushed to the spot and carried the injured duo to the nearby hospital by private vehicle. The deceased Shri Pansare then shifted to Breach Candy Hospital, Mumbai where he died on 20th February 2015.

6. The prosecution relies upon four eye witnesses to the incident namely Mrs.Pansare, Atharva Shinde, Meena Jadhav and one Sushil Desai. Mrs.Pansare identified accused nos.3 and 4 whereas Atharva Shinde identified accused no.1. As far as third eye witness Meena Jadhav and Sushir Desai are concerned, they did not identify any accused.

7. Having gone through the charge sheets and the relevant material it is prima facie evident that the statement of one witness Sagar Lakhe was recorded on 17th January 2018, which is the basis to implicate the Applicant.

8. The said statement was recorded after more 3½ years of the incident. The whole case of the prosecution is based on circumstantial evidence against the Applicant and there is no prima facie direct evidence.

9. The allegation against the Applicant is mainly of conspiracy. In the above referred backdrop the application is being opposed by learned APP and learned counsel for the Intervenor on the ground that offence is very serious and there are antecedents against Applicant.

10. However, considering the fact that statement of a witness Shri Lakhe which was recorded after more than 3½ years it gives rise to the suspicion why the said witness did not approach to the police earlier and gave the statement only after this Court issued various directions in Criminal PIL No.15 of 2015 and in Criminal W.P No.3512 of 2015.

11. Moreover, there is no progress in the trial and if the period of incarceration of the Applicant is considered, it is evident that the Applicant is in jail from more than five years.

12. Thus, considering the pace with which the trial is proceeding and the number of witnesses remained to be examined, it is evident that there is no end of the trial in sight.

13. In the case of *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh*)¹, has observed thus:

“23. This Bench in a recent decision dated 03.07.2024 in Javed Gulam Nabi Shaikh Vs. State of Maharashtra, Criminal Appeal No. 2787 of 2024, has held that howsoever serious a crime may be, an accused has the right to speedy trial under the Constitution of India. That was also a case where fake counterfeit Indian currency notes were seized from the accused-appellant. He was investigated by the National Investigating Agency (NIA) under the National Investigating Agency Act, 2008 and was charged under the UAP Act alongwith Sections 489B and 489C IPC. He was in custody as an undertrial prisoner for more than four years. The trial court had not even framed the charges. It was in that context, this Court observed as under:

9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

23.1. After referring to various other decisions, this Court further observed as follows:

19. 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

1 (2024) SCC Online SC 1755

of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The overarching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.

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26. Angela Harish Sontakke Vs. State of Maharashtra is a case where the accused-appellant was charged under various provisions of the UAP Act as well as under the IPC. He sought for bail. This Court observed that, undoubtedly, the charges are serious but the seriousness of the charges will have to be balanced with certain other facts like the period of custody suffered and the likely period within which the trial can be expected to be completed. In that case, it was found that the appellant-accused was in custody since April, 2011 i.e. for over five years. The trial was yet to commence. A large number of witnesses were proposed to be examined. It was in that context that the appellant-accused was directed to be released on bail.

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30.1. Thereafter, this Court held as follows:

7.1. We are dealing with a case of the accused whose guilt is yet to be established. So long as he is not held guilty, the presumption of innocence is applicable. He cannot be deprived of all his rights guaranteed under Article 21.....

32. This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.”

14. Thus, considering the above referred reasons and the long period of incarceration in the backdrop of the fact that there is no

end of trial in sight, I am of the opinion that though the application was strongly opposed by learned APP and learned counsel for Intervenor, the Applicant is entitled for grant of bail. Hence, I pass following order :

ORDER

- (i) Bail Application is allowed and disposed off;
- (ii) It is directed that the applicant shall be released on bail in Crime No.39 of 2015 registered with Rajarampuri Police Station, Kolhapur, for the offences punishable under Sections 120(B), 302, 307 r/w 34 of the Indian Penal Code r/w Sections 3(1) r/w 25(1B), (A) r/w Sec.5 r/w Sec.27 of Indian Arms Act, on furnishing P.R.Bond of Rupees Twenty Five Thousand with one solvent surety in the like amount;
- (iii) If the Applicant is not in jail in any other offence, on release of the Applicant in the present crime, he shall attend Rajarampuri Police Station, Kolhapur on every 1st and 16th of each month between 10.00 a.m and 12.00 noon till conclusion of trial, except on the date of trial of this case or any other case;
- (iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;
- (v) Liberty is granted to the State for cancellation of bail if the applicant breaches any condition or misuses the liberty or commits similar offence;
- (vi) The applicant shall attend the trial before the Trial Court regularly on every date unless exempted by the trial Court for any

reason;

(vii) Interim Application No.3674 of 2024 stands disposed off.

(ANIL S.KILOR, J.)

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