

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 29 OF 2024

Ajay Vishnu Shinde

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Prashant Pandey, Mr. Dinesh Jadhvani, Ms. Ridhima Mangaonkar, Mr. Pramod Sharma, Mr. Rahul Sinkar & Mr. Krishna Joshi i/by W3Legal LLP for Applicant
 - Mr. Hitendra J. Dehia, APP for State
 - Mr. Suryakant Doke, PSI, Borivali Police Station
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 16, 2025

P. C.:

1. Heard Mr. Pandey, learned Advocate for Applicant and Mr. Dedhia, learned APP for State.

2. Applicant has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "Cr.PC.") in connection with Crime No. 141/2020 registered with Borivali Police Station under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short, "IPC").

3. There are two accused in the crime. One of the accused being a juvenile is tried separately. Present Applicant for the purpose of nomenclature shall be addressed as accused No. 1 and juvenile will be addressed as accused No. 2.

4. According to the first informant - complainant Mr. Pramod Sharma and his statement appended at page Nos. 21-23 of the Application, it is the case of complainant / prosecution that on 12.02.2020 at about 05:30 p.m., complainant along with his two other friends namely Vishwajeet Chauhan and Vighnesh Gadhe were chatting in front of their building known as Soham Residency situated at Kulkarni Road, Borivali (W), Mumbai. At that time complainant spotted accused No. 1 and accused No. 2 approaching in their direction in an angry manner. Complainant has stated that there was a previous enmity between the accused and Vighnesh Gadhe and therefore complainant immediately took Vighnesh Gadhe inside the building and hid him over there. When the accused approached the incident spot and did not find Vighnesh Gadhe, they entered into a verbal altercation with Complainant. It is stated by the complainant that at that time accused No. 2 (juvenile) was carrying a broken beer bottle in his hand when the accused were approaching them. Accused got angry and kicked the Active scooter belonging to Vighnesh Gadhe which was parked outside the building on the road due to which Vighnesh Gadhe came out and confronted with the accused. Complainant has stated that at that time, he intervened in the scuffle and the verbal altercation but in view of the demeanor of both the accused, complainant and his other friend ran away from the incident

spot and hid themselves. Complainant has stated two specific incidents which *prima facie* do not co-relate. *Qua* the Applicant before me who is accused No. 1, complainant has stated that he was also in possession of a broken beer bottle but he has in the same breath stated that Applicant held both hands of Vighnesh Gadhe from behind and abetted in the crime. He has stated that at that time accused No. 2 (juvenile) who was carrying the broken beer bottle in his hand stabbed Vighnesh Gadhe in the abdomen with the broken beer bottle which led to severe bleeding. He has also stated that after the victim was stabbed in the abdomen of Vighnesh Gadhe, Applicant gave two fist blows one of his chest and other on his stomach and both accused thereafter left the incident spot. Complainant and his other friends then took the victim to the hospital where he succumbed to his injuries.

5. Mr. Pandey would argue that the role of Applicant if seen is to the extent of only holding the victim's hands from behind. However, he would fairly submit that such an act leading to accused No. 2 juvenile stabbing would be an act to aid in the commission of the offence. He would however submit that Applicant has been incarcerated for 4 years and 10 months since 13.03.2020. He has no antecedent. His long incarceration as also his age be considered by the Court alongwith his role. He would fairly draw my attention to

the order dated 11.10.2022 (Coram : Bharati Dangre, J.) passed in the previous Bail Application filed by Applicant whereby this Court expressed its disinclination to entertain the Bail Application due to which the Bail Application was withdrawn. This Court also requested to frame the charge within a period of three months from the date of the said order and directed to proceed with the trial expeditiously. On that count Mr. Pandey would place certain statistics before this Court. He would submit that out of 70 days on which the matter was heard, on 34 dates the accused was not produced from the jail. This statement of Mr. Pandey is vehemently opposed by the learned APP- Mr. Dedhia. He would submit that the accused was produced on VC at the then time. Mr. Pandey has also stated that only on 4 days, Advocate for Applicant has remained absent and has sought adjournment during the trial after passing of the order dated 11.10.2022. On the status of the trial, Mr. Dedhia has stated that four witnesses have been examined and the the trial is posted for hearing today when two further witnesses are to be examined today itself. He would submit that in all prosecution would be examining 12 witnesses.

6. In the case of *Emperor vs H.L. Hutchinson*¹ the Allahabad High Court as far back as in the year 1931 held that power of granting bail

¹ AIR 1931 ALL 356

conferred on High Court is entirely unfettered by any conditions. It has held that legislature has given the High Court and the Court of Session discretion unfettered by any limitation other than that which controls all discretionary powers vested in a Judge, viz. that the discretion must be exercised judiciously. The Court has given primacy to the fact that Accused person if granted bail will be in a much better position to defend himself. In this very case, it was delineated that grant of Bail is the Rule and refusal is an exception.

7. In Hon'ble Supreme Court in the case of ***Hussainara Khatoon vs. Home Secy., State of Bihar***² held as under:-

“Now obviously procedure prescribed by law for depriving a person of liberty cannot “reasonable, fair or just” unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as “reasonable, fair or just” and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21.”

8. The Hon'ble Supreme Court in ***Shaheen Welfare Association Vs. Union Of India***³ dealing with a PIL seeking reliefs for under-trial prisons charged under the Terrorist and Disruptive Activities (Prevention) Act, 1987 held as under:-

² (1980) 1 SCC 81

³ 1996 SCC (2) 616

“10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh’s case (supra), on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21.”

9. The Hon’ble Supreme Court in case of ***Union of India Vs. K. A.***

Najeeb⁴ held as under:-

“12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act”) which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), Babba v. State of Maharashtra and Umarmia v. State of Gujarat enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.”

10. The Applicant has been in custody for almost 4 years and 10 months. Detaining an under-trial individual for such an extended period violates his fundamental right to speedy trial flowing from Article 21 of the Constitution. At this juncture, I deem it appropriate to list out the observations of the Hon’ble Supreme Court shedding light on concerns underlying the Right to speedy trial from the point of view of the accused in custody whose liberty is affected in the case of ***Abdul Rehman Antulay & Ors. Vs. R.S. Nayak & Anr***⁵.

“86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all

4 Criminal Appeal No. 98 of 2021

5 1992 (1) SCC 225

situations. Nor is it possible to lay down any hard and fast rules. These propositions are:

(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the Right to speedy trial from the point of view of the accused are:

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.”

(4) – (11) -----X----- (emphasis supplied)

11. The Supreme Court has also simultaneously laid down in a series of judgments and orders that in situations where the under-trial / accused persons have suffered incarceration rather long incarceration for considerable period of time and there is no possibility of the trial being completed within the foreseeable future, Constitutional Courts can exercise power to release the accused under-trials on bail, as bail is the rule and jail is an exception.

12. In the present case charge has been framed. It appears that possibility of the trial being completed in the foreseeable future is doubtful. It is also an admitted position that the Applicant has suffered incarceration for about 4 years and 10 months.

13. Furthermore, the Supreme Court in the case of **Javed Gulam Nabi Shaikh v. State of Maharashtra**,⁶ observed as follows:

“18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

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 of the crime.”

(emphasis added)

13.1. In **Satender Kumar Antil v. CBI**,⁷ Supreme Court reiterated the following stand regarding jurisprudence of bail:

“12. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India...”

(emphasis added)

6 2024 SCC OnLine SC 1693

7 (2022) 10 SCC 51

14. Considering the long incarceration of the Applicant and the progress of the trial pursuant to the order dated 11.10.2022 and in view of the specific role of present Applicant by the Complainant as delineated herein above, I am of the opinion that Applicant deserves to be enlarged on bail.

15. In view of the above, present Applicant is allowed in terms of prayer clause (a) subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- (ii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 a.m. to 12:00 p.m. for three months or as and when called;
- (iii) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if she does so, it will entitle the prosecution to apply for revocation of this order;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

- (v) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (vi) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;
- (vii) Any infraction of the above conditions shall entail revocation of this order.

16. It is clarified that the observations in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case.

17. All concerned shall act on production of a server copy of this order and no authority shall insist on a certified copy of this order.

18. In view of the above directions, Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]

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