

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.1943 OF 2024

Magan Kishan Tupe	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Amit Icham for the applicant.

Ms. Pallavi Dabholkar, APP for the respondent-State.

ATUL
GANESH
KULKARNI
Digitally signed by
ATUL GANESH
KULKARNI
Date: 2025.06.18
17:54:31 +0530

CORAM : AMIT BORKAR, J.

DATED : JUNE 18, 2025

P.C.:

1. This is a bail application filed under Section 439 of the Code of Criminal Procedure, 1973. The applicant seeks regular bail in connection with Crime Register No.32 of 2022 registered with Ulhasnagar Police Station, for offences punishable under Sections 302 (murder), 307 (attempt to murder), 324 (voluntarily causing hurt by dangerous weapons), 323 (voluntarily causing hurt), 143 (unlawful assembly), 146 (rioting), 147 (punishment for rioting), 148 (rioting with deadly weapons), and 149 (common object) of the Indian Penal Code, 1860.

2. The case of the prosecution, in brief, is that the deceased used to run a shop in Chellaram Market, Ulhasnagar, and would often sleep inside the shop during the night hours. As per the prosecution's version, during the intervening night of 21st and 22nd January 2022, between approximately 3:24 a.m. and 3:32

a.m., the applicant along with co-accused persons allegedly broke into the market premises with the intention of committing theft. After committing theft at one shop, they proceeded further and came across the shop of the deceased, who was asleep at the time.

3. It is alleged that the applicant and the other accused asked the deceased for water and a tobacco bidi. When the deceased declined to give them anything, the applicant along with the co-accused persons got agitated and assaulted him using kicks, fists, and a waist belt. It is further alleged that the injuries caused to the deceased during this incident led to his death after a span of seven days. The applicant was arrested on 26th January 2022.

4. Learned Advocate appearing for the applicant submitted that there is no direct role attributed to the applicant in causing the fatal injury. He pointed out that in the CCTV footage relied upon by the prosecution, the applicant is merely seen in the company of the co-accused Manoj, who was allegedly seen carrying and using a waist belt to assault the deceased. It is contended that the injuries may have been inflicted solely by Manoj and not by the present applicant. It is further submitted that the applicant has now undergone custody for more than three and a half years. Except for the allegation of theft immediately preceding the incident, there are no other criminal antecedents reported against him. The learned Advocate thus submits that in the absence of clear, specific and conclusive material showing the exact role played by the applicant in inflicting fatal injuries, the benefit of bail may be granted.

5. On the other hand, the learned Additional Public Prosecutor opposed the bail application and submitted that the offence is of a serious nature. It is contended that the medical evidence reveals that the cause of death was due to hemorrhage resulting from a head injury. Though the deceased died after a period of seven days, it is submitted that the injuries were the direct cause of death. The learned APP submits that the incident reflects a brutal act in furtherance of an unlawful assembly and the gravity of the offence does not justify granting bail at this stage.

6. I have carefully considered the submissions made on behalf of both sides and also perused the material placed on record, including the charge-sheet and CCTV footage. It appears that the case of the prosecution rests upon the CCTV footage which shows the presence of the applicant at the spot. It is also not in dispute that the applicant was in the company of the co-accused, one of whom allegedly used a belt to assault the deceased. However, the specific role of the applicant in causing the fatal injury is not established with clarity at this stage. The material does not indicate any recovery of weapon at the instance of the applicant. The question whether the applicant actively participated in the fatal assault or was merely accompanying the assailants is a matter that needs to be adjudicated during the course of trial.

7. It is further relevant to note that except for the crime which is alleged to have been committed by the applicant immediately prior to the incident in question, there are no other criminal antecedents to the discredit of the applicant. There is nothing on record to suggest that the applicant is a habitual offender or that

he is involved in any other serious crime.

8. The applicant has been in judicial custody since 26th January 2022, and as of today, he has undergone more than three years of incarceration as an undertrial. The charge-sheet has already been filed and charges against the applicant have been framed on 1st July 2024.

9. However, despite framing of charges, there is no substantial progress in the trial till date. The prosecution has cited as many as 44 witnesses. Considering the number of witnesses and the nature of allegations involving multiple accused, it appears highly unlikely that the trial will conclude in the immediate future.

10. It is a settled position of law that prolonged incarceration as an undertrial, without reasonable progress in trial proceedings, militates against the right to life and personal liberty guaranteed under Article 21 of the Constitution of India. The right to a speedy trial is a fundamental right, as repeatedly emphasized by the Hon'ble Supreme Court in several judgments, including *Hussainara Khatoon v. Home Secretary, State of Bihar* [(1980) 1 SCC 81] and *Satender Kumar Antil v. CBI* [(2022) 10 SCC 51].

11. In the present case, having regard to the period already undergone by the applicant in custody, the absence of antecedents other than the connected offence, and the bleak possibility of early conclusion of trial, the continued detention of the applicant, in my view, would not serve any further purpose at this stage.

12. Considering the totality of circumstances, including the prolonged pre-trial detention, the nature of evidence, and the fact

that the applicant is not shown to be a flight risk, I am of the opinion that a case for grant of bail is made out. However, the seriousness of the offence warrants imposition of stringent conditions to ensure that the applicant does not misuse the liberty.

13. Hence, the following order is passed:

- (i) The Bail Application is allowed.
- (ii) The applicant is directed to be released on bail in connection with Crime Register No.32 of 2022 registered with Ulhasnagar Police Station, on furnishing a personal bond of Rs.25,000/- (Rupees Twenty-Five Thousand Only) with one or more solvent sureties in the like amount, to the satisfaction of the Trial Court.
- (iii) The applicant shall report to the Ulhasnagar Police Station on the first Monday of every month between 10.00 a.m. and 12.00 noon, until further orders.
- (iv) The applicant shall not tamper with the evidence or attempt to influence any witness.
- (v) The applicant shall appear before the Trial Court on every date of hearing unless prevented by sufficient cause.
- vi) The applicant shall not leave the territorial jurisdiction of the Trial Court without prior permission.
- vii) The applicant shall not indulge in any criminal activity during the pendency of the trial.

(viii) Breach of any condition shall entail cancellation of bail.

14. The bail application stands disposed of accordingly.

(AMIT BORKAR, J.)