

Ajay

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

CRIMINAL BAIL APPLICATION NO. 2134 OF 2024

Sumit Prakash Uttekar @ Sattu

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Kunal Jha a/w. Mr. Harekrishna Mishra and Mr. Kailash Rathod, Advocates for Applicant.
 - Mr. Sukanta A. Karmakar, APP for Respondent – State.
 - Mr. Ajitsingh Rajput, PI and Mr. Bajrang Desai, PSI – Samta Nagar Police Station.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 25, 2025.

P.C.:

1. Heard Mr. Jha, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R.No.16 of 2020 registered with Samta Nagar Police Station, Mumbai for the offences punishable under Sections 307, 120B, 323, 504 and 506 read with 34 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 37(1) and 135 of the Maharashtra Police Act, 1951.

3. There are 3 Accused in the crime. Present Applicant is arraigned as Accused No.1. Accused Nos.2 and 3 are already released on bail considering their role in the offence on the ground that they

were involved in inflicting fist and kick blows on the injured victim. Injured victim incidentally was known to the Applicant. Both of them had a relationship rather a financial relationship between. That apart, record clearly shows that 3 – 4 months prior to the date of the incident which occurred on 12.01.2020, there was another incident which involved Accused No.2 – Deepak Pandey and the present Applicant in question which was infact mediated by the injured victim himself. The precursor to the incident in question happens to be a transaction wherein certain monies were advanced by the injured victim to the Applicant and Applicant was unable to repay the same to him for more than 3 months. Injured victim was seeking return of the said amount which irked the Applicant and he alongwith the co-accused Deepak Pandey and Shailendra Singh called the injured victim at the incident spot at about 03:15 p.m. which was a public spot in Kandivali area and had a verbal altercation with him, Accused Nos.2 and 3 initially rained fist and kick blows on the injured victim followed by the Applicant stabbing him with a knife. The weapon i.e. knife has been recovered. However what impels me to consider the present Application is his long incarceration, pending trial.

4. Mr. Karmakar, learned APP would persuade the Court to consider the case on incarceration rather than delve on the merits of the case considering that it may be determined at the time of trial. *Prima facie*, record shows that the charges have not been framed.

Applicant is incarcerated since 22.01.2020. In these circumstances, possibility of the trial commencing or even concluding in the near foreseeable future is remote and hence Applicant's case deserves consideration.

5. Mr. Jha would submit that Applicant was on bail during the COVID-19 pandemic period, but he surrender back pursuant to the directions received by the Applicant. That would not make any difference considering that this Court has recently dealt with a similar case in the case of *Santosh Pralhad Waghmare Vs. The State of Maharashtra*¹.

6. The Supreme Court has also held in a series of judgements and orders that in situations where the under-trial-prisoner / accused persons have suffered incarceration rather long incarceration for a 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-trial on bail, as bail is the rule and jail is the exception.

7. This Court (Coram: N.J. Jamadar, J.) in the case of *Avinash Ashok Torane Vs. The State of Maharashtra*² while dealing with a bail application for offence under Section 302 of IPC considering parity with another co-accused who was enlarged on bail considered the

¹ Bail Application No.180 of 2024 – decided on 07.02.2025

² Bail Application No.3535 of 2023 decided on 08.01.2024.

unlikelihood of completion of trial coupled with the period of long incarceration of 1 year 3 months of the Applicant and enlarged him on bail.

8. Similarly this Court (Coram: M.S. Karnik, J.) in the case of *Sonu Parmeshwar Jha Vs. The State of Maharashtra*³ was dealing with a bail application for offences under Sections 302 and 304(b) of IPC and considering circumstantial evidence against the accused as well as long incarceration of accused of 1 year 7 months enlarged him on bail.

9. In the case of *Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Anr.*⁴, the Supreme Court while granting bail to accused incarcerated for 4 years in paragraph Nos.16 and 17 held as under:-

“16. Criminals are not born 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.

17. 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.”

³ Bail Application No.4122 of 2021 decided on 18.01.2023

⁴ (2024) 9 SCC 813

10. In the case of *Chintan Vidyasagar Upadhyay Vs. The State of Maharashtra*⁵, in a case under Sections 302 and 396 of IPC the Supreme Court granted bail to the accused who had undergone 6 years of pre-trial incarceration. Similarly in the case of *Indrani Pratim Mukerjea Vs. Central Bureau of Investigation*⁶ the Supreme Court in a case under Section 302 of IPC granted bail to the accused, she having undergone pre-trial incarceration of 6 and a half years.

11. This Court in the case of *Guddu Soubhan Harijan Vs. The State of Maharashtra*⁷ dealing with a similar situation considering the long incarceration of the under-trial / Accused therein for 7 years granted him bail in Bail Application No.3470 of 2024 on 06.02.2025.

12. In view of my above observations and facet of long incarceration of the Applicant as delineated above and no probability of trial being completed in the foreseeable future, the case of prosecution being based on circumstantial evidence, invoking the right to speedy justice and personal liberty as enshrined in Article 21 of the Constitution of India, the Bail Application stands allowed subject to following conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond of Rs.25,000/- (Rs. Twenty Five Thousand only) with one or two sureties of the like

⁵ SLP (CrL.) No.2543 of 2021 decided on 17.09.2021

⁶ SLP (CrL.) No.1627 of 2022

⁷ Bail Application No.3470 of 2024 decided on 06.02.2025.

amount;

- (ii) Applicant shall report to the Investigating Officer at Samta Nagar Police Station, Mumbai as and when called by the Investigating Officer;
- (iii) Applicant is directed to stay outside the jurisdiction of Mumbai City and the Mumbai Suburban District for a period of 6 months and he shall be entitled to enter the jurisdiction only for the purpose of attending the Investigating Officer as directed herein and for attending the trial on the scheduled dates of hearing in the Court;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (v) Applicant shall not influence 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, as applicable; and
- (vii) Any infraction of the conditions shall entail prosecution to apply for cancellation of bail granted to the

Applicant.

13. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall proceed uninfluenced by the present order.

14. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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