

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2887 OF 2024

Akash Ashok Waghela	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Shailesh Kharat a/w Ms. Kalpana Chate and Mr. Govind Mundhe i/by Mr. Sumitkumar Nimbalkar, Advocate for Applicant.
 - Mr. Rishikesh M. Pethe, APP for State.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 13, 2025

P. C.:

1. Heard Mr. Kharat, learned Advocate for Applicant and Mr. Pethe, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail in connection with Crime No. 258 of 2019 registered with Pydhonie Police Station for the offence punishable under Section 302 r/w 34 of the Indian Penal Code, 1860.

3. Applicant is arrayed as Accused No.2 in the present crime. Accused No.1 is the mother of the Applicant. Victim is the sister of the present Applicant. Accused No.1 has been enlarged on bail.

4. *Prima facie* there is an eye witness statement recorded at page No.36 of the Application, wherein he has stated that he saw

Applicant strangulating the victim on the date of the crime. What is crucial are the preceding circumstances which led to the involved incident. The deceased victim sister of Applicant desired to marry some person and had gone with him but she was brought back to the house and after she was brought back the Applicant brother got enraged with the precursor incident and strangulated her with her Dupatta (ओढ़णी).

5. The only reason which probably impels me to consider the Application of the Applicant is his long incarceration for 5 years 3 months and 23 days pending trial.

6. Mr. Pethe, learned APP for the State would submit that gravity of the crime in the present case with direct evidence available would dis-entitle the Applicant for being released on bail. He would submit that statement of his brother-in-law who saw Applicant committing the horrendous crime of silencing his own sister until she became motionless which is appended at page No.36 of the Application if seen shows that intensity and gravity of the crime. Mr. Pethe is right in his submission when said statement of the brother-in-law is read.

6.1. Another submission made by the learned APP is with respect to the status of the trial. Though prosecution in the

chargesheet has desired to probably examine 26 witnesses in support of its case, the examination of prosecution witness No.1 was completed in the year 2024 but thereafter there has been no further progress. On instructions he would submit that prosecution desires to examine a further 12 to 14 witnesses and would endeavor to complete the trial expeditiously and hence he would persuade the Court to reject the Application of the Applicant.

7. I have heard the learned Advocates and perused the record of the case. Appended at page No.202 of the Application is the order dated 04.11.2023 rejecting the previous Bail Application of the Applicant. Reading of said order shows that the Court at that time directed expediting of the trial. It is however pending.

8. Though the learned APP may be right in making his contention considering the *per-se* gravity of the crime, but what is also required to be considered is the long incarceration of the Applicant pending trial and the uncertainty of the trial being completed in the near foreseeable future which can be ascertained from the submissions which are recorded hereinabove. Applicant's long incarceration of 5 years 3 months and 25 days pending trial and the *prima facie* observations made hereinabove entitle the Applicant for bail.

9. Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing PR. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (v) 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 he does so, it will entitle the prosecution to apply for cancellation of this order;

(vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(vii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and

(viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

10. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

11. Bail Application is allowed and disposed.