

Ajay

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

BAIL APPLICATION No. 4064 OF 2024

Vijay Dhondiba Gavale

.. Applicant

Versus

State of Maharashtra

.. Respondent

.....

- Mr. Mateen Shaikh a/w Mr. Nadeem Shaikh, Mr. Jammu Shaikh, Mr. Kshirsagar Srinivas, Ms. Muskan Shaikh, Mr. Razique Shaikh and Mr. Arshad Shaikh, Advocates for Applicant.
- Mr. Sukanta A. Karmakar, APP for Respondent – State.
- Mr. Bharat Navale, PSI Narpoli Police Station.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 08, 2025

P. C.:

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

2. This is a Bail Application filed by the Applicant-Accused under Section 439 of Cr.P.C. in relation to F.I.R. I-243/2016 for offences under 302, 307, 498A and 34 of Indian Penal Code, 1860 (for short “**IPC**”) registered on 20.05.2016 with Narpoli Police Station.

3. The Applicant-Accused is alleged to have poured kerosene and set ablaze his wife (victim/Complainant) following a verbal altercation which erupted between the couple after the Applicant-Accused returned home in an intoxicated state on the date of incident. The allegations are based on the contents in the FIR which is lodged

by the victim herself on the date of incident prior to her demise after 8 days while she was undergoing treatment for her injuries in the Civil Hospital, Thane. The statement of Complainant-victim in the FIR also states that the couple were in a strained relationship due to their failed attempts at conceiving a child.

4. Mr. Shaikh, learned Advocate for the Applicant-Accused, at the outset disputes the Prosecution narrative; in his version, while he admits having strained relationship and the verbal altercation but asserts that it was the victim herself who in the sudden impulse, self-immolated with the intention to teach the Applicant-Accused a lesson. He further submits that there are no eye-witnesses to the alleged incident. He would point out to this Court that the chargesheet in relation to the incident has already been filed; in such a case where investigation is complete, the prosecution would gain no benefit from keeping the Applicant behind bars. He would further submit that the Trial Court is yet to frame charges against the Applicant-Accused who is in custody since 21.05.2016; in such a case where there is an undue delay of more than seven and a half years in concluding trial no purpose would be served in continuing the judicial custody of the Applicant, as further incarceration of the Applicant would amount to punishing him even before his case is considered on merits.

5. Mr. Karmakar, learned APP appearing on behalf of Respondent-State would submit that the charges attracted against Applicant-Accused are of serious nature and that he is a danger to the society having committed offence of such a serious nature. He would draw this Court's attention to the statement of the Complainant-victim and would submit that the statement should be treated as a dying declaration as per the provisions of Indian Evidence Act, 1872.

6. I have heard Mr. Shaikh for the Applicant and Mr. Karmakar for the Respondent – State and with their able assistance, I have perused the record.

7. Applicant and Respondent both appear to have a different version *inter-alia* with regards to who set the victim on fire. Be that as it may, this variance in both the versions are to be adjudicated in a trial. This Court while exercising its jurisdiction under Section 439 is not required to make any observations on the factual aspect or into the merits of the matter. The principal rule to be considered while deciding bail applications is to ascertain whether the Accused will appear before court for trial.

8. The Supreme Court in the case of ***Gudikanti Narasimhulu & Ors. v. Public Prosecutor, High Court of Andhra Pradesh***¹ observed the following:-

1 1978 (1) SCC 240

“6. Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve. When the case is finally disposed of and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage and the principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be liberated, to take judgment and serve sentence in the event of the court punishing him with imprisonment. In this perspective...”

(emphasis supplied)

9. The investigation in this matter is complete, and Chargesheet has been filed. The Applicant has been in custody for over seven and a half years. Detaining an under-trial individual for such an extended period violates their 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 Supreme Court shedding light on concerns underlying the Right to speedy trial from the point of view of the accused in ***Abdul Rehman Antulay & Ors. vs R.S. Nayak & Anr²***.

“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 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,

² 1992 (1) SCC 225

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)

10. The Supreme Court has laid down in a series of judgements and orders that in such situations where the under-trial accused persons have suffered 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.

11. In the present case, it is an admitted position that even charge has not been framed. It appears that the 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 more than seven and a half years.

12. Applicant is an individual having no prior criminal antecedents, he used to work as a Labourer prior to this unsavory incident, he has limited financial means to support himself and his family. Notably, it is essential to remember that even serious charges such as the ones levied upon the Applicant-Accused remain merely allegations until established after undergoing the rigorous test of trial. In the present case the Trial Court is yet to frame charges, it seems that the likelihood of trial concluding in near future is slim. Therefore, I am inclined to grant bail to the Applicant – Accused on the following terms:-

- (i) Applicant – Vijay Dhondiba Gavale is directed to be released on bail on furnishing PR. Bond of Rs.25,000/- (Rs. Twenty Five Thousand only) with one surety of the like amount;
- (ii) Applicant shall not influence any witness or tamper with the evidence in any manner;
- (iii) Applicant shall attend interrogation if called for by the Investigating Officer since chargesheet is already filed;
- (iv) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all hearing dates,

unless specifically exempted and will not take any unnecessary adjournments. If he does so it will entitle the prosecution to apply for revocation of this order;

- (v) Applicant shall not leave the State of Maharashtra without prior permission of Trial Court;
- (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 cancellation of bail granted to the Applicant.

13. 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.

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

15. Application is allowed and disposed.

Ajay

[MILIND N. JADHAV, J.]