

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4357 OF 2024

Sunny Laxman Sapakal

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Narayan G. Rokade a/w Mr. Udaysinh Deshmukh, Mr. Amit Shinde, Mr. Siddharth R. Ghodke, Mr. Abhhang Suryawanshi, and Mr. Harishchandra Jadhav, for Applicant.
- Mr. Vishwajeet Sagare, APP for Respondent.
- Mr. Balasaheb Gavhane, PSI, Hill Line Police Station.

CORAM : MANISH PITALE, J.

DATE : 30th JANUARY, 2025.

P. C. :

1. Heard Mr. Rokade, learned counsel for the applicant and Mr. Sagare, learned APP for respondent – State.

2. In this application, the applicant is seeking bail, as he was arrested on 11th September, 2018, in connection with First Information Report No.I-219 of 2018, registered at Hill Line Police Station, District Thane, for offences under Sections 302, 120-B and 364 read with Section 34 of the Indian Penal Code, 1860 (IPC).

3. At the outset, the learned counsel for the applicant seeks relief on the ground of parity as co-accused – Ganesh Balraj Sunke was granted bail by this Court by an order dated 05th December, 2024, passed in Bail Application

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No.3427 of 2024. The said co-accused person was granted bail purely on the aspect of long incarceration suffered by him and in that context, the stage of the trial before the Trial Court.

4. The learned counsel for the applicant submits that the applicant herein was also arrested on 11th September, 2018, like the co-accused person – Ganesh Balraj Sunke and therefore, the reasons recorded in the order granting bail to the co-accused person ought to inure to the benefit of the applicant herein also.

5. The learned APP, concedes to the fact that the applicant herein was arrested on 11th September, 2018. The stage of the trial is a matter of record.

6. The date of the arrest of the present applicant i.e. 11th September, 2018, shows that as on today, the applicant is already suffered incarceration for a period of more than 6 years and 3 months.

7. While granting bail to the co-accused person i.e. Ganesh Balraj Sunke, this Court observed as follows :

“5. The present case is a case of circumstantial evidence and it is asserted on the part of the prosecution that there is sufficient material to show that the applicant was last seen together with the deceased (victim) and therefore, a strong

prima facie case exists against the applicant.

6. *This Court is not going into the merits of the matter, except for taking note of the fact that the present case is indeed a case of circumstantial evidence and there is no eye-witness to the incident. But a perusal of the order dated 03.11.2023, passed by this Court shows that liberty was reserved for the applicant to file fresh bail application, if there was no substantial progress in the trial.*
7. *On 03.11.2023, the stage of trial was that only charges had been framed and not a single prosecution witness had been examined. As on today, after more than an year has elapsed, the only progress in the trial is that the first prosecution witness is in the witness box and his cross-examination is yet to be undertaken. This indicates that there is indeed no substantial progress in the trial. The FIR, in the present case, was registered on 11.09.2018 and the applicant was arrested on the same day. Charges were framed as far back as on 27.05.2022 and yet, as on today, only the first witness is in the witness box, while the prosecution intends to examine as many as 47 witnesses. At this rate, there is hardly any possibility of the trial being completed within reasonable period of time.*
8. *The Supreme Court, in its judgments in the cases of Union of India vs. K. A. Najeed [(2021) 3 SCC 713], Satender Kumar Antil vs. Central Bureau of Investigation [(2022) 10 SCC 51], followed by recent judgment in the case of Javed Gulam Nabi Shaikh vs. State of Maharashtra and another (2024 SCC OnLine SC 1693), has held that where*

the accused undertrial has suffered long period of incarceration and there is remote possibility of the trial being completed within reasonable period of time, the Constitutional Courts ought to exercise their power to release such accused undertrials on bail. It is indicated that the seriousness of offences cannot be a ground for denying bail in such circumstances. It is further indicated that even in cases under special statutes, which require the accused undertrial to satisfy a higher threshold for seeking bail, the Constitutional Courts ought to exercise such power.

9. *In the order of the Supreme Court in the case of **X vs. State of Rajasthan and another** (supra), on which the learned APP has placed reliance, what is indicated is a general principle that once the trial commences and the prosecution starts examining its witnesses in cases involving serious offences, the Court should be slow in entertaining the bail application. But this still does not dilute the position of law laid down and reiterated recently by the Supreme Court that in the face of the accused undertrials having been incarcerated for a long period of time and the trial moving at snail's pace, the Constitutional Courts can certainly exercise their power in the context of such accused undertrials.*

10. *In the present case, the applicant having suffered incarceration for a period of more than 6 years and 2 months, this being a case of circumstantial evidence and there being no criminal antecedents of the applicant, this Court is inclined to allow the application, subject to*

imposing appropriate conditions.”

8. This Court is of the opinion that the above quoted reasons stated in the order granting bail to the co-accused person apply with full force to the case of the present applicant also. Hence, the present application also deserves to be allowed for the same reasons.

9. In view of the above, the application is allowed in the following terms:

- (A) The applicant shall be released on bail in connection with FIR No.I-219 of 2018, dated 11th September, 2018, registered at Hill Line Police Station, District Thane, on furnishing PR Bond of ₹ 50,000/- and one or two sureties in the like amount, to the satisfaction of the Trial Court.
- (B) The applicant, upon being released on bail, shall report to Hill Line Police Station, District Thane, on the first Monday of every month between 10:00 a.m. and 12:00 noon during the pendency of trial.
- (C) Upon release, within one week, the applicant shall inform the Investigation Officer as well as the Trial Court about his contract numbers and residential address and update the same in case of any change.
- (D) The applicant shall co-operate with the Trial Court in

completing the proceedings expeditiously and attend the proceedings before the Trial Court on each and every date, unless specifically exempted, for the reasons to be recorded on writing.

- (E) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not undertake any action that may influence the informant, witnesses and other persons concerned with the case.

10. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions is violated.

11. It is also clarified that the observations made in this order are limited to the disposal of the present bail application and the Trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

12. The application is disposed of.

(MANISH PITALE, J.)