



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4681 OF 2024

Vinay Rajaram Yadav
vs.
State of Maharashtra

...Applicant
...Respondent

Mr. Prashant Pandey a/w. Mr. Dinesh Jadhvani, Ms. Ridhima Mangaonkar, Mr. Pramod Sharma, Mr. Rahul Sinkar and Ms. Krishma Joshi, for the Applicant.
Mr. S.H. Yadav, for the State.

CORAM : N. J. JAMADAR, J.
DATE : JANUARY 22, 2025

P.C.:

1. Heard the learned counsel for the parties.
2. The applicant, who is arraigned in Session Case No. 468 of 2021 arising out of C.R. No. 63 of 2020, registered with Bangur Nagar police station for the offences punishable under sections 120-B, 302, 506(ii) read with 34 of Indian Penal Code, 1860 (the Penal Code) and section 37(1)(a) read with 135 of Maharashtra Police Act, 1951, has preferred this application to enlarge him on bail.
3. Mr. Nitin Gupta, the first informant, claims to be the Executive President of an Association, namely, Maharashtra Police Boys. Suresh @ Surya Mastud (the deceased), had evinced interest to join the said association. On 24th February, 2021 the deceased came to meet the first informant at Caffé Sadar, Link Road, Goregaon (w), Mumbai. The first informant, his friend Sharif

Qureshi, the deceased and latter's friend Rajesh Yadav (A1) had a meeting. At about 3.00 pm, after they came out of the hotel, Sharif Qureshi, the deceased, and Rajesh Yadav (A1) had a chat. While Rajesh Yadav (A1) was about to start his scooter, the applicant, who was allegedly armed with a hammer, gave multiple blows on the head of the deceased from behind. The deceased fell down. The co-accused Dheeraj Vishwakarma (A3) unleashed blows by means of the knife. Sharif Qureshi tried to intervene and save the deceased by means of helmet which he was carrying. The assailants threatened Sharif Qureshi and other persons with dire consequences, if they intervened. The deceased succumbed to his injuries.

4. I have heard Mr. Prashant Pandey, the learned counsel for the applicant, and Mr. Yadav, the learned APP for the State, at some length. With the assistance of the learned counsel for the parties, I have perused the report under section 173 of the Code and the material on record.

5. Mr. Pandey, the learned counsel for the applicant, submitted that the applicant deserves to be enlarged on bail, on the ground of long period of incarceration, as despite directions by this Court, by order dated 9th January, 2024 passed in first BA No.3535 of 2023, there has been no progress in the trial.

6. By the said order, this Court had requested the Session Court to conclude the trial as expeditiously as possible and preferably within the period of nine months from the date of the communication of the said order. Mr. Pandey submitted that, except framing charge, there has not been any progress in the trial.

7. Mr. Pandey further submitted that since the applicant has been in custody for almost four years, the prolonged period of incarceration impinges upon the right to speedy trial, which is a facet of right to life and liberty. To buttress this submission, Mr. Pandey placed reliance on a number of orders and judgments including the orders of the Supreme Court in the cases of **Chintan Vidyasagar Upadhyay vs. The State of Maharashtra**¹; **Indrani Pratim Mukerja vs. Central Bureau of Investigation and Anr.**²; **Javed Gulam Nabi Shaikh vs. State of Maharashtra and Anr.**³ and **Paras Ram Vishnoi vs. The Director, Central Bureau of Investigation**⁴. Mr. Pandey laid special emphasis on the order in the case of **Paras Ram Vishnoi** (supra) wherein bail was granted to the accused even after recording the statement of the accused under section 313 of the Code.

8. Mr. Pandey urged that, even on merit, the applicant deserves

1 SC Spl.LA.(CrI.) No. 2543/2021 Dt. 17/09/2021.

2 SC Spl.L.A.(CrI.) No. 1627/2022 Dt.18/05/2022.

3 SC Cri.Appeal No.2787 of 2024 Dt.03/07/2024.

4 SC Cri.Appeal No.693 of 2021 Dt.27/07/2021.

to be released on bail. Rajesh Yadav (A1), the alleged principal conspirator, has been enlarged on bail by this Court by an order dated 2nd August, 2022. Though the applicant is alleged to be the person who assaulted the deceased by means of hammer, yet, there is a serious doubt about the identity of the applicant. The Test Identification parade, was conducted on 4th May, 2021. Such delayed test identification parade erodes the credibility of the prosecution case. Reliance was placed on an order passed by this Court in the case of **Abdul Samad Akbar Shaikh vs. The State of Maharashtra**⁵ wherein also such a ground of delayed identification was urged.

9. In opposition to this, Mr. Yadav, the learned APP, stoutly resisted the prayer for bail. It was submitted that the trial could not proceed on account of non-cooperation of the applicant. In fact, Vakalatnama was filed on behalf of the applicant as late as September, 2024. Therefore, the applicant can not be permitted to urge the ground of delay in trial.

10. On the merits of the matter, Mr. Yadav, submitted that the applicant was the principal assailant. The postmortem report corroborates the ocular account. The deceased was killed on a public street in a broad day light. Thus, having regard to the gravity of the offence, the applicant does not deserve to be enlarged on bail.

5 BA.No.3014 of 2014 Dt.09/12/2024

11. To begin with, it is imperative to note that the postmortem report, prima facie, indicates that the deceased met homicidal death. The Autopsy Surgeon noted that there were six external injuries i.e. three CLWs on the occipital parietal region of head and three incised stab wounds. The prosecution has attributed three CLWs on the head to the assault perpetrated by the applicant. The postmortem report further indicates that there was a fracture of occipital bone.

12. Apart from the first informant, who was allegedly the eye witness to the occurrence, two other witnesses have named the applicant as the person who unleashed blows by means of hammer on the head of the deceased. Mr. Amey Naik and Mr. Pravin Mane have stated that they had known the deceased as well as the assailants. Initially, the applicant unleashed blows by means of hammer, and, thereafter, co-accused stabbed the deceased by means of knife.

13. Prima facie, the time and place of the occurrence, the manner of assault and the number of assailants indicate that the deceased was assaulted pursuant to a plan and with an intent to kill him. The first informant has identified the applicant as the assailant in the test identification parade. It is true, there is an element of delay in holding the test identification parade. However, it does not appear

to be a case that the identification of the applicant, as one of the assailants, solely rests on the identification in the test identification parade. Prima facie, there are witnesses who have attributed the specific role of assault by hammer to the applicant.

14. The circumstantial evidence in the nature of the recovery of the weapon of the assault i.e. hammer, pursuant to the discovery made by the applicant also assumes significance. The accused made a disclosure statement to show the hammer which was kept at his house and led the police party to his house, and, took out the hammer from the bed. There were red stains and hairs stuck to the said hammer. The discovery, thus, prima facie, supports the prosecution case.

15. Cumulatively, at this stage, a very strong prima facie case of the applicant being one of the assailants, is made out.

16. This takes me to the aspect of long period of incarceration, which was forcefully canvassed by the learned Counsel for the Applicant. Indeed, long period of incarceration without a real prospect of conclusion of the trial impairs the guarantee under Article 21 of the Constitution of India. By a catena of judgments, it is held that even the restrictions on the grant of bail incorporated in the Special Acts, like, Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Section 21 of the Maharashtra

Control of Organized Crime Act, 1999 and Section 45 of the Prevention of Money Laundering Act, 2002, melt down in the face of long period of incarceration.

17. In the case at hand, the applicant has been in custody since 26 February 2021. The charge came to be framed on 6 March 2024. From the perusal of the roznama, however, it cannot be said that no part of delay is attributable to the accused. It seems that on 2 September 2024, Vakalatnama was filed on behalf of accused No.3. Accused No.2 sought time to engage an Advocate. On 13 September 2024, Vakalatnama came to be filed on behalf of accused No.2.

18. The aforesaid aspect of delay is required to be appreciated in the light of the nature and gravity of the offences and the nature of the material, prima facie, pressed into service against the applicant. The deceased was allegedly killed in a broad day light on a busy public street. The nature of the occurrence, prima facie, indicates planning and pre-meditation.

19. In these circumstances, I am not persuaded to exercise discretion in favour of the applicant.

20. Hence, the following order.

ORDER

1] The application stands rejected.

2] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

3] The learned Sessions Judge seized with Sessions Case No.468 of 2021 is directed to conclude the trial in the said Sessions Case, as expeditiously as possible.

Application disposed.

(N. J. JAMADAR, J.)