

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.4690 OF 2024

ARJUN
VITTHAL
KUDHEKAR
Digitally
signed by
ARJUN
VITTHAL
KUDHEKAR
Date:
2025.01.23
20:27:07
+0530

Suraj Sanjay Botre

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Tapan Thatte a/w. Mr. Vivek Arote, Mr. Akshay Dingale,
Advocates, for the Applicant.

Mr. A. S. Gawai, APP, for the Respondent-State.

CORAM: MADHAV J. JAMDAR, J.

DATED : 23rd JANUARY 2025

PC:-

1. Heard Mr. Thatte, learned Counsel appearing for the Applicant and Mr. Gawai, learned APP appearing for the Respondent-State.

2. At the outset, it is required to be noted that this is second Bail Application preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The first Bail Application being Bail Application No.1843 of 2023 has been allowed to be withdrawn by this Court by the order dated 28th February 2024 with liberty to file a fresh Bail Application after a period of 9 months in case, there is

no substantial progress in the trial. Accordingly, in terms of the said liberty, the present Bail Application is filed.

3. The relevant details are as follows:-

1.	C. R. No.	149 of 2021
2.	Date of registration of F.I.R.	12/07/2021
3.	Name of Police Station	Dattawadi Police Station, Pune.
4.	Section/s invoked	302, 143, 144, 147, 148, 149, 504, 506 r/w. 120-B of the Indian Penal Code, 1860 & Sections 4(25) of the Arms Act and Sections 37(1) r/w. 135 of Maharashtra Police Act & Section 7 of the Criminal Law Amendment Act.
5.	Date of incident	11/07/2021
6.	Date of arrest	12/07/2021
7.	Date of filing of Charge-sheet	07/10/2021

4. The prosecution case is set out in the affidavit-in-reply dated 10th January 2025 in paragraph No.3, which reads as under:

“3. I say that the prosecution story in short is as under:-

(a) That Orig. Complainant/Informant namely Shri Onkar Shivaji Tiratkarve, lodged FIR on 12.07.2021 inter alia stating therein that 6 months before lodging the FIR, there was an earlier quarrel between the Informant's brother Mr. Akshay, Nikhil Botre and Pravin Botre, one Mr. Akshay, assaulted Nikhil Botre and Pravin Gade.

(b) It is further case of the prosecution is that the informant, his brother Akshay, Nikhil Botre and Pravin Gade were standing on Dandekar Bridge. Due to the earlier quarrel, the said Nikhil Botre threatened to kill Mr. Akshay as he had assaulted him earlier.

(c) It is further case of the prosecution is that out of the said anger on 11.07.2021 at about 6.45 pm. That said Nikhil Botre, Pravin Gade, Rohit Khilare, Suraj Botre i.e. Applicant Amardeep Bhalerao and their associates were following the informant and his brother and therefore, out of the fear they were running towards Dattawadi Area. That time Nikhil Bhotre and Rohit Khilare assaulted Mr. Akshay Kiratkarve with Iron Sickle, Pravin Gade assaulted Mr. Akshay Kiratkarve with Iron Rod, Suraj Botre i.e. Applicant and Amardeep Bhalerao assaulted Mr. Akshay Kiratkarve with hands and kicks and killed him.

It is further case of the prosecution is that thereafter the accused persons created terror in that vicinity.

(d) On the basis of the complaint lodged by the Orig. Complainant, offence vide CR No.149 of 2021 under Sections 302, 143, 144, 147, 148, 149, 504, 506, 120(B) of the Indian Penal Code 4(25) Arms Act. 37(1)/135, Maharashtra Police Act Criminal Law Amendment Act, section 7 registered with Datwadi (Parvati) Police Station, Pune City Dist.:

Pune against (1) Nikhil Balu Botre, (2) Suraj Sanjay Botre (3) Pravin @ Pilly Ganpat Gade 4) Amardeep Mukund Bhalerao 5) Rakesh @ Rohit Prakash Khilare 6) Sagar Popat Darekar investigation was commenced.”

5. It is the contention of Mr. Thatte, learned Counsel appearing for the Applicant that the Applicant has been arrested on 12th July 2021 and till date there is no progress in the trial, except framing of the charge. He further submits that as per the charge-sheet there are 46 witnesses proposed to be examined by the prosecution. Accordingly, the trial will take considerable time to conclude.

6. On the other hand, Mr. Gawai, learned APP for the Respondent-State strongly opposed the Bail Application. He submits that the material on record shows the involvement of the Applicant in the crime. He submits that there are about four eye-witnesses to the incident. He further submits that the deceased has been mercilessly killed and the deceased had suffered 26 injuries. He also submits that there is one antecedent against the Applicant bearing C.R. No.269 of 2018 registered with Vishrambag Police Station, Pune under Sections 326 r/w. 34 of the Indian Penal Code, 4(25) of the Arms Act and 37(1)/135 of the Maharashtra Police Act. He therefore, submits that the Bail Application be rejected.

7. There is substance in the contention raised by Mr. A.S. Gawai, learned APP that the material on record shows that the Applicant is involved in the crime. There are eye-witnesses to the incident and therefore, the Applicant is not entitled for bail on merits. In fact, by the above referred order dated 28th February 2024, as this Court was not inclined to grant bail on merits, earlier Bail Application bearing Bail Application No.1843 of 2023 was allowed to be withdrawn. Thus, no case is made out for grant of bail on merits.

8. However, it is required to be noted that by said order dated 28th February 2024 liberty has been given to file fresh Bail Application after a period of 9 months, in case, there is no substantial progress in the trial.

9. Perusal of the record shows that the Applicant is incarcerated since 12th July 2021. Till date there is no progress in the trial except framing of the charge. As per the Charge-sheet, there are 46 witnesses proposed to be examined by the prosecution. The trial is unlikely to conclude any time soon and is likely to take a considerably long time.

10. Although there is one antecedent against the Applicant, the same is of the year 2018 registered with the Vishrambag Police Station, Pune under Sections 326 r/w. 34 of the Indian Penal Code, 4(25) of the Arms Act and 37(1)/135 of the Maharashtra Police Act and the Applicant has been released on bail in that offence.

11. Speedy trial is one of the facets of right to life and liberty guaranteed under Article 21 of the Constitution of India. Speedy trial is an essential ingredient of “reasonable, fair and just” procedure guaranteed by Article 21 and it is the constitutional obligation of the State to devise such a procedure as would ensure speedy trial to the Accused.¹ Therefore, the Applicant is entitled for bail. If the Applicant’s detention further continues, it will amount to an infringement of his fundamental right under Article 21 of the Constitution of India of speedy trial.

12. Mr. Thatte, learned Counsel appearing for the Applicant states that as several witnesses are residing in Pune District, the Applicant will therefore not reside within Pune District and that

1 Hussainara Khatoon (IV) v. Home Secy., State of Bihar, (1980) 1 SCC 98

the Applicant will reside at B/111, Jijamata Nagar, G. D. Ambekar Road, Kala Chowki, Mumbai-400 033.

13. The Applicant does not appear to be at risk of flight.

14. Accordingly, the Applicant can be enlarged on bail by imposing conditions.

15. In view thereof, the following order:-

ORDER

(a) The Applicant – Suraj Sanjay Botre be released on bail in connection with C.R. No.149 of 2021 registered with the Dattawadi Police Station, District - Pune on his furnishing PR. Bond of Rs.1,00,000/- with one or two local solvent sureties in the like amount.

(b) The Applicant shall not enter the Pune district after being released on bail, except for reporting to the Investigating Officer, if called, and for attending the trial.

- (c) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (d) The Applicant shall report to the Kalachowki Police Station, Mumbai once every week, on every Sunday between 11:00 a.m. and 1:00 p.m. till the conclusion of the trial. The Police Inspector of Kalachowki Police Station, Mumbai to communicate details thereof to the Investigating Officer.
- (e) The Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.
- (f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.

(g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.

(h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

16. The Bail Application is disposed of accordingly.

17. It is clarified that the learned Trial Court shall decide the case on its merits, uninfluenced by the *prima facie* observations made in this order.

[MADHAV J. JAMDAR, J.]