

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4734 OF 2024

Aroz @ Afroz Bilal Ansari @ Minna

Applicant

.. (Org. Accused No. 1)

Versus

State of Maharashtra

.. Respondent

.....

- Ms. Tahera Qureshi for Applicant
- Mr. Mayur S. Sonavane, APP for State
- Mr. Gaikar, API, Shantinagar Police Station, Bhiwani is present

.....

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 20, 2025

P. C.:

1. Heard Ms. Qureshi, learned Advocate for Applicant and Mr. Sonavane, learned APP for State.
2. After hearing learned Advocate for Applicant and the learned APP, this Court at length passed the following order on 06.01.2025:-

"1. Heard Ms. Qureshi, learned Advocate for Applicant and Mr. Sonavane, learned APP for Respondent – State.

2. Present Bail Application is filed by the Applicant – Accused, who is arraigned as Accused No.1. His indictment is under Sections 302, 504, 506 readwith 34 of the Indian Penal Code, 1860 (for short “IPC”) alongwith 3 family members namely his mother, father and brother. Other 3 accused have been granted bail by the Sessions Court.

3. *The incident in question happens to be a dash given by the auto-rickshaw in which Applicant was travelling to the motorcycle which was driven by the victim and thereafter assaulting him with a knife. Admittedly, Applicant and his family and victim and his family are all residing in the same area and are infact immediate neighbours. This is the position at the time of the incident. Incident dates back to 11.11.2018. Now both the families have changed their residence as informed by Ms. Qureshi.*

4. *Ms. Qureshi would draw my attention to the record of the case which states that there was a long standing civil dispute / incident of rivalry between the Applicant's and deceased victim's families for claiming the open space in front of their respective houses. She has drawn my attention to a civil dispute between the parties i.e. namely between father of Applicant and father of victim dating back prior to 1998. Civil Appeal No.32 of 1998 was decided by judgment dated 06.02.2003 in favour of victim father and against father of Applicant which is appended at page No.69 of the Bail Application. The said dispute then passed on to the present generation.*

5. *She would submit that in view of the Civil Court judgment having been passed which probably affected the family of Applicant, dispute between parties with respect to the claim for open space grew over the years. However, she would submit that the date of the incident is 11.11.2018 which is much after the passing of the judgment of the Civil Court. In all fairness, she would draw my attention to the medical / injury report which shows the gravity of injury caused by Applicant by using the knife which has been recovered. However, she would*

submit that more than 6 years have now lapsed after the incarceration of the Applicant, who was then 24 years old and today he is 30 years old and the trial has not begun. She would therefore persuade me to consider the Application for grant of bail on any stringent condition that may be imposed by the Court solely on account of long incarceration and the facts of the case pleaded above.

6. **PER CONTRA**, Mr. Sonavane would draw my attention to the gravity of offence and would submit that in view of the precursor incident, this could be a case of premeditated offence in the present case which could be a result of a conspiracy by the Applicant alongwith his family. I have seen the orders of grant of bail to the 3 family members of Applicant and there is no allegation of conspiracy whatsoever stated therein.

7. *Prima facie*, it is seen from record that at about 06:15 p.m. on the date of the incident on 11.11.2018, auto-rickshaw in which the Applicant was travelling banged and dashed the victim and his family who were on their motorcycle leading to a scuffle and altercation, resulting in the Applicant using the knife which is a table knife to assault the Complainant.

8. *Prima facie*, from the record it is clearly seen that both the families were neighbours of each other and were living with a civil dispute between them pertaining to claim open space in front of their respective houses. This claim was decided in the Civil Appeal in favour of the complaint's family and therefore the family of Applicant were harboring animosity. However, record shows that the civil dispute was decided long back in

favour of Complainant's father. The Appeal was also decided in 2003 in his favour.

9. *In the above background, present incident has occurred at 06:15 p.m. on 11.11.2018.*

10. *Mr. Sonavane would submit that the act of Applicant qualifies as a premeditated act, since immediately after getting down from the auto-rickshaw, Applicant assaulted the Complainant with the knife. He draws my attention to the injury certificate and has persuaded to take cognizance of the injuries suffered by the victim where he has suffered specific injuries namely to his elbow, thigh, upper zone of chest and mid zone of chest cavity. Question is whether the Applicant was carrying the knife with him to assault the Complainant or he got the knife only after getting out of the auto-rickshaw after the dash took place is not clear. The incident occurred in a busy market place area in the evening at 06:15 p.m. with several people around.*

11. *In the above background, Ms. Qureshi would therefore persuade me to consider the long incarceration of the Applicant who has been in jail since 11.11.2018 for 6 years 1 month and 25 days and consider the Applicant's case for grant of bail.*

12. *Mr. Sonavane is directed by the Court to take instructions and place the details of the trial before the Court on the next adjourned date with respect to the progress of the trial, the number of witnesses as the next date before the Trial Court as informed by him is on 16.01.2025.*

13. On the next adjourned date, after hearing Mr. Sonavane, this Court shall pass further appropriate order in the present Bail Application.

*14. Stand over to **20th January 2025**. To be placed under the caption "**Part-Heard**" matters."*

3. In paragraph No. 12 of the above order, learned APP was directed to place the details of the trial before the Court. Today I am informed that Charge is framed and the prosecution shall be examining several witnesses which are not confirmed at present. As observed by this Court, the issue in the present case emanates from a long standing civil dispute, *inter alia*, pertaining to open space in front of the house property right from the time of the predecessors-in-title of the complainant and the Applicant - accused before me. The incident in question as seen and delineated in my previous order is rather unfortunate. Though Mr. Sonavane, learned APP would argue before me that the act of the Applicant would qualify as a pre-meditated attack since immediately after getting down from the auto-rickshaw the Applicant assaulted the complainant with a knife but in view of the fact that the Civil Court had already passed its verdict with respect to the said open space in front of the property of the Applicant and the complainant and about its entitlement, that was the bone contention which was simmering between the parties and the family members of both sides were at loggerheads with each other. Hence the fact that

family of the Applicant was harboring animosity cannot be ruled out. As also considering the long incarceration of the Applicant and no certainty of the trial to be completed in the near future, I am inclined to consider the request made by learned Advocate for Applicant.

4. Ms. Qureshi would refer to the decision of this Court (Coram : Sarang V. Kotwal, J.) passed in Bail Application No. 4172 of 2023 on 12.07.2024 (Pintu Jaykishan Sharma Vs. The State of Maharashtra) wherein incarceration of the Applicant was approximately 5 years and 6 months which was taken into consideration by the Court for the purpose of grant of bail to the Applicant despite the Applicant being convicted under Section 302, IPC. She would also place reliance on the decision of the Supreme Court in the case of *Javed Gulam Nabi Shaikh Vs. State of Maharashtra*¹. It was the case under UAPA and NDPS. She would refer to the said decision in order to persuade the Court to consider the object of granting bail which has been delineated by the Supreme Court therein. She would also invoke principles of speedy trial being a fundamental right to life and liberty enshrined under Article 21 of the Constitution of India and persuade the Court to consider the same for grant of bail to the Applicant in view of his long incarceration.

1 2024 SCC OnLine SC 1693

5. In the case of ***Emperor vs H.L. Hutchinson***² the Allahabad High Court, as far back as in the year 1931 held that power of granting bail conferred on High Court is entirely unfettered by any conditions. It held that legislature has given the High Court and the Court of Session discretion unfettered by any limitation other than that which controls all discretionary powers vested in a Judge, viz. that the discretion must be exercised judiciously. The Court has given primacy to the fact that accused person if granted bail will be in a much better position to defend himself. In this very case, it was delineated that grant of Bail is the Rule and refusal is an exception. This was in the famous Meerut Conspiracy case. Justice Mukherjea writing for the Bench in paragraph No.9 held as under:-

“9. Speaking for myself, I think it very unwise to make an attempt to lay down any particular rules for the guidance of the High Court, having regard to the fact that the legislature itself left the discretion of the Court entirely unfettered. The reason for this action on the part of the legislature is not far to seek. The High Court might be safely trusted in this matter and it goes without saying that it would act in the best interests of justice whether it decides in favour of the prosecution or the defence. The variety of cases that may arise from time to time cannot be safely classified and it will be dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes.”

5.1. The Supreme Court in a landmark decision of 1978 in the case of ***Gudikanti Narasimhulu & Ors. v. Public Prosecutor, High Court of Andhra Pradesh***³ observed as under:-

2 AIR 1931 ALL 356

3 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)

6. Thereafter the Supreme Court in a plethora of judgements have discussed the rights conferred by Article 21 qua grant of bail and that such rights cannot be taken away unless the procedure is reasonable and fair and in cases where there is unreasonable delay in trial it would undoubtedly impact the rights of an undertrial. Some of the important discussions of the Supreme Court and some of the High Courts as discussed hereinunder:-

6.1. In the case of ***Hussainara Khatoon Vs. Home Secy., State of Bihar***⁴ the Supreme Court held as under:-

“Now obviously procedure prescribed by law for depriving a person of liberty cannot “reasonable, fair or just” unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as “reasonable, fair or just” and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21.”

4 (1980) 1 SCC 81

6.2. The Hon'ble Supreme Court in the case of ***Shaheen Welfare Association vs Union Of India***⁵ dealing with a Public Interest Litigation seeking reliefs for undertrial prisons charged under the Terrorist and Disruptive Activities (Prevention) Act, 1987 held as under:-

“10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh's case (supra), on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21.”

6.3. The Supreme Court in case of ***Union of India v. K. A. Najeeb***⁶ while commenting upon the possibility of early completion of trial and extended incarceration held as under:-

“12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act”) which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), Babba v. State of Maharashtra and Umarmia v. State of Gujarat enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.”

7. Applicant in present case has been in custody for almost six years . There is no possibility of the trial been commencing in near future. Detaining an under-trial individual for such an extended period and further violates his fundamental right to speedy trial flowing from

5 1996 SCC(2) 616

6 Criminal Appeal No. 98 of 2021

Article 21 of the Constitution. At this juncture I deem it appropriate to list certain observations of the Supreme Court shedding light on concerns underlying the “Right to speedy trial” from the point of view of an accused in custody whose liberty is affected. In the case of ***Abdul Rehman Antulay & Ors. Vs R.S. Nayak & Anr.***⁷ the Supreme Court held as under:-

“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, 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)

⁷ 1992 (1) SCC 225

8. The Supreme Court has also simultaneously laid down in a series of judgments and orders that in situations where the under-trial / accused persons have suffered incarceration rather long 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.

9. In the decisions of the Supreme Court and various other High Courts viz.; (i) *Chintan Vidyasagar Upadhyay Vs. The State of Maharashtra*⁸ (ii) *Indrani Mukerjee Vs. CBI*⁹ (iii) *Manoj Namdev Gajakosh Vs. State of Maharashtra*¹⁰ (iv) *Naresh Harischandra Mali Vs. The State of Maharashtra, at the instance of Revdanda Police Station*.¹¹ , (v) *Anvinash Ashok Torane Vs. State of Maharashtra*¹², (vi) *Roland Victor Monterio Vs. State of Maharashtra*¹³ (vii) *Akshay Anil Walode Vs. The State of Maharashtra*¹⁴ (viii) *Raghvendra Singh VS. State of NCT of Delhi*¹⁵ , Courts have considered the substantial period of incarceration undergone by the Accused, the stage of trial and whether the trial has commenced or not. Additionally Courts have also

8 SLP (Crl.) No. 2543 of 2021 decided on 17.09.2021

9 SLP (Crl.) No. 1627 of 2022 decided on 18.05.2022

10 Bail Application No. 1012 of 2022 decided on 02.08.2022

11 Bail Application No. 3858 of 2022 decided on 27.07.2023

12 Bail Application No. 3535 of 2023 decided on 08.01.2024

13 Bail Application NO. 1981 of 2023 decided on 11.01.2024

14 Bail Application NO. 40 of 2024 decided on 22.02.2024

15 2025 SCC OnLine Del 21

considered the principle of parity and granted bail to the Applicants based on the specific facts and circumstances of the respective cases.

10. In view of my above observations and findings *qua* the Applicant's case, Applicant is released on bail subject to the following terms and conditions:-

ORDER

- (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) Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 a.m. to 12:00 p.m. for three months or as and when called;
- (iii) 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 revocation of this order;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

- (v) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (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;
- (vii) Any infraction of the above conditions shall entail cancellation of this order.

11. 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.

12. Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]

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