

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.5334 OF 2024

Manoj Urf Anand Sheshnarayan Dube .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Mr. R. N. Bhor a/w. Mr. Walchand Sawant and Mr. Rahul Gaikwad Advocates i/by Kamble S. K. for Applicant.
 - Mr. Balraj B. Kulkarni, APP for Respondent.
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CORAM : MILIND N. JADHAV, J.
DATE : MARCH 13, 2025

P.C.:

- 1.** Heard Mr. Bhor, learned Advocate for Applicant and Kulkarni, learned APP for Respondent.
- 2.** This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking Bail in connection with C.R. No.244 of 2015 registered with Waliv Police Station for offences punishable under Section of 302 of the Indian Penal Code, 1860 (for short 'IPC').
- 3.** The prosecution case is that the Applicant inflicted blows to the deceased with wooden log and hollow cement block during their fight on 18.06.2015 leading to his death.
- 4.** The prosecution case finds it basis on the version narrated by the complainant who is the employer of Accused in the FIR. He has

narrated that on the intervening night of 17.06.2015 and 18.06.2015 he had received a call from an owner of the neighboring premises who informed the him about the Applicant inflicting blows on the victim. When the complainant reached the incident spot, he witnessed the Applicant banging the shutter with a wooden log, attempting to enter inside and the victim lying unconscious with bottles of alcohol near him. The complainant alongwith the help of bystanders chased the Applicant and since they observed that victim had bottles of alcohol near him they assumed that he must be under the influence of alcohol and hence in deep sleep. The victim's lifeless body was discovered the subsequent day on the very same spot. This led to filing of the FIR on 18.06.2015. Applicant was arrested on the same day.

5. Mr. Bhor, learned Advocate appearing on behalf of Applicant would submit that the evidence against Applicant is completely circumstantial in nature and based on hearsay evidence. He would submit that prosecution has failed to create a complete chain of evidence which is contrary to the possibility of innocence of Accused. He would submit that although 12 witnesses have been examined till date in the trial which had commenced, it is still pending completion, but to date, no witness has been examined since the past one year. He would submit that Applicant has spent more than nine years in prison awaiting completion of trial and in the said circumstances where completion of trial in the near foreseeable future is unlikely, he would

pray for Applicant to be released on bail.

6. Mr. Kulkarni, learned APP vehemently opposes the grounds raised by Mr. Bhor. He would submit that Applicant and deceased were last seen engaged in a fight where deceased was rendered unconscious at the end. He would submit that had complainant misconceived the dead body of deceased to be due to the influence of alcohol otherwise Applicant would have been held at that very moment itself. He would submit that circumstances point out to a *prima facie* case being made out against Applicant. He would submit that trial in present case has begun and 12 witnesses have already been examined. He would rely on the decision of the Supreme Court in the case of *X Vs. State of Rajasthan*¹ to submit that in cases involving serious offences like murder, rape, dacoity Courts should not grant bail where trial has already commenced. He would hence urge the court for the Application to be rejected.

7. I have heard Mr. Bhor, learned Advocate for Applicant and Mr. Kulkarni, learned APP for Respondent at the bar and with their able assistance perused the record of the case. Submissions made by them have received due consideration of this Court.

8. Applicant has been arrested on 18.06.2015, he has been in custody for about a period of 9 years and 8 months and 25 days. No

¹ 2024 INSC 909.

prosecution witness has been examined in the past one year. There is considerable delay in the trial in the Trial Court. In such circumstances it is improbable for the trial to conclude in the near foreseeable future.

9. Applicant has undergone a substantial long period of incarceration even before decision, pending trial. The evidence against him is circumstantial in nature. It is one of the principle rules of criminal jurisprudence that an Accused is innocent until proven guilty and this rule cannot be taken lightly especially when liberty of an undertrial has been at stake for over 9 years and 8 months. Complicity of Applicant in the crime can be certainly proved in trial after adequate evaluation of evidence and he may be subjected to appropriate punishment, if found to be guilty, but at this *prima facie* stage, I am inclined to consider Applicants' Application solely due to his long incarceration and his fundamental right to speedy trial being hampered.

10. In the case *Abdul Rehman Antulay & Ors. Vs R.S. Nayak & Anr.*² 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

² 1992 (1) SCC 225.

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)

10.1. In the case of *Avinash Ashok Torane Vs. The State of Maharashtra*³, this Court (Coram: N.J. Jamadar, J.) while dealing with a bail application for an offence under Section 302 of IPC considering parity with another co-accused who was enlarged on bail after considering the unlikelihood of completion of trial coupled with the period of long incarceration of 1 year 3 months of the Applicant, enlarged the undertrial accused on bail.

10.2. In the case of *Sonu Parmeshwar Jha Vs. The State of Maharashtra*⁴ this Court (Coram: M.S. Karnik, J.) while dealing with a bail application for offences under Sections 302 and 304(b) of IPC

³ Bail Application No.3535 of 2023 decided on 08.01.2024

⁴ Bail Application No.4122 of 2021 decided on 18.01.2023

considering circumstantial evidence against the accused as well as his long incarceration of accused of 1 year 7 months enlarged him on bail.

10.3. In the case of *Rup Bahadur Magar @ Sanki @ Rabin Vs. State of West Bengal*⁵, under Sections 394, 395, 397, 307 readwith 120-B of IPC, the Supreme Court granted bail to the accused considering long incarceration undergone by him of 2 years and 9 months pending trial.

10.4. In the case of *Santosh Ramprasad Hairijan Vs. The State of Maharashtra*⁶, in a case under Section 302 of IPC this Court taking into account long period of incarceration undergone by the accused of 3 years and 4 months granted him bail.

10.5. In the case of *Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Anr.*⁷, the Supreme Court while granting bail to an accused incarcerated for 4 years, in paragraph Nos.16 and 17 of the said decision held as under which needs to be considered while deciding the present Bail Application:-

“16. Criminals are not born but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted

⁵ Criminal Appeal No.4144 of 2024 decided on 04.10.2024

⁶ Bail Application No.1819 of 2024 decided on 29.11.2024

⁷ (2024) 9 SCC 813

with indigence or other privations.

17. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

10.6. In the case of *Balwinder Singh Vs. State of Punjab and Anr.*⁸, in a case under Sections 302 and 307 of IPC the Supreme Court granted bail to an accused who was behind bars for 4 years citing unlikelihood of completion of trial in the near future as also on parity with the other co-accused.

10.7. In the case of *Roland Victor Monterio Vs. State of Maharashtra*⁹, this Court (Coram: N.J. Jamadar, J.) in a case under Sections 302, 304-B and 498-A of the IPC granted bail to an accused on account of his long incarceration of 4 years. Similarly in the case of *Naresh Harishchandra Mali Vs. The State of Maharashtra*¹⁰, this Court (Coram: N.J. Jamadar, J.) in a case under Sections 302 and 307 of IPC granted bail to the accused as he was in prison for a period of more than 5 years.

11. In the present case what impels the Court to consider the Bail Application of Applicant is his long incarceration of 9 years and 8 months and 25 days. Prosecution objection that since trial has

⁸ SLP (CrL.) No.8523 of 2024

⁹ Bail Application No.1981 of 2023 decided on 11.01.2024

¹⁰ Bail Application No.3858 of 2022 decided on 27.07.2023

commenced in the present case, the bail should be rejected is not justified for such long incarceration as above. Any other apprehension can be taken care of by applying appropriate conditions.

12. In view of the above, *prima facie* observations considering the prospect of the trial not getting completed in the near foreseeable future, due to long incarceration of Applicant, the Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs.25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;
- (iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iv) After his release from jail, Applicant shall report to the

Investigating Officer as and when called for;

- (v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark his presence on the next working day;
- (vi) 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 cancellation of this order;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and
- (ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

13. It is clarified that the observations made in this order are

limited for the purpose of granting Bail only and I have not made any observations on the merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

14. Bail Application No.5334 of 2024 is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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