

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2149 OF 2024**

Akash Kachru Ahire	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

**ALONGWITH
BAIL APPLICATION NO. 230 OF 2025**

Bala Ramchandra Bhopi	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Raviraj Paramane for applicant in BA/2149/2024.

Mr. Veerdhawal Deshmukh, i/b. Mr. Deva Shinde and Mr. Rohit Shirsath for applicant in BA/230/2025.

Ms. Pooja Mankoji a/w. Ms. Sonali Pawar, i/b. Mr. Sandeep Dere for intervenor/original complainant in both applications.

Mr. P. P. Deokar, APP for respondent-State in BA/2149/2024.

Mr. A. A. Naik, APP for respondent-State in BA/230/2025.

Mr. S. S. Narale, API, Dombivli Police Station, District Thane.

**CORAM : MANISH PITALE, J.
DATE : 11th FEBRUARY, 2025**

P.C. :

1. Heard Mr. Paramane and Mr. Deshmukh, the learned counsel for the applicants, Mr. Deokar and Mr. Naik, learned APPs for the respondent-State and Ms. Mankoji, learned counsel having instructions to appear on behalf of the first informant.

2. At the outset, the learned counsel appearing for the applicant in Bail Application No.2149 of 2024, submits that the name of the applicant has been inadvertently stated as Akshay Kachru Ahire, while the correct name is Akash Kachru Ahire.

3. In the interest of justice, leave is granted to the said applicant to make appropriate amendment in the said application to mention the name of the applicant as Akash Kachru Ahire. The amendment be carried out forthwith.

4. Bala Ramchandra Bhopi, applicant in Bail Application No.230 of 2025 was arrested on 20.05.2017 and Akash Kachru Ahire, applicant in Bail Application No.2149 of 2024 was arrested on 14.05.2017, in connection with FIR No.114 of 2017 dated 09.05.2017, registered at Dombivli Police Station, District Thane, for offences under Sections 302, 307, 364, 452, 201, 143, 144, 146, 147, 148, 149, 323, 504, 506 and 120-B of the Indian Penal Code, 1860 and Sections 3, 25, 27 and 30 of the Arms Act, 1959.

5. The applicants are 2 out of the 11 accused persons, who are alleged to have indulged in firing upon the victims, resulting in death of one of the victims at the spot, injury to another and one victim being allegedly taken out from the place of the incident and subsequently, being killed.

6. The investigation in the present case was completed and charge-sheet was filed. Charge was framed in the year 2022 and while the list of witnesses shows that the prosecution intends to examine 94 witnesses to prove its case, as on today, only 1 witness has been examined by the prosecution.

7. The learned counsel appearing for the applicants referred to the relevant material and submitted that in the present case, even if the incriminating material, as claimed by the prosecution against the applicants, is taken into consideration, there is no overt act

attributable to them. It is submitted that the material does not indicate direct involvement or overt act on the part of the applicants in respect of either of the two victims in the present case. It is further submitted that there is no allegation of use of any weapon against the applicants, much less any fire arm. At worst, the material on record may indicate their presence outside the place where the first of the two victims was allegedly done to death. It is submitted that the prosecution is relying upon CCTV footage and the applicants being identified in Test Identification Parade, as also the contents of memorandum of a co-accused person under Section 27 of the Evidence Act. It is submitted that such material does not make out even a *prima facie* case against the applicants.

8. It is further submitted that a co-accused person i.e. Vishal @ Bobby Shankar Bhoir was granted bail by this Court by order dated 18.12.2024 passed in Bail Application No.1031 of 2024, despite the fact that at least one witness had named the said co-accused person, about having used the fire arm to assault the victims. Yet, this Court granted bail to the said co-accused person, thereby indicating that the case of the applicants herein is on a better footing. It is further submitted that the applicants have suffered incarceration for about 7 years and 9 months. The trial is not likely to be completed within reasonable period of time, as only 1 witness is examined and the prosecution intends to examine 94 witnesses. On this basis, it is submitted that the applications may be allowed.

9. On the other hand, the learned APPs have opposed the present applications. It is submitted that the presence of the applicants at the place of the incident, where the first victim was fired upon, is clearly made out by the material on record. It is further submitted that both

the applicants can also be said to be involved in the murder of the second victim and this is evident from the statement of the co-accused person. It is submitted that the applicants, in connivance with the co-accused persons, were part of an unlawful assembly and committed the brutal murder of the two individuals and therefore, this Court may not show any indulgence to the applicants.

10. The learned counsel having instructions to appear on behalf of the first informant referred to an order dated 28.07.2022 passed by the concerned Sessions Court to claim that the accused persons, including the applicants, are themselves responsible for delay in the trial and therefore, the aspect of long incarceration ought not to inure to their benefit.

11. This Court has considered the rival submissions. A perusal of the material on record indeed shows that even if the entire material upon which the prosecution relies, is taken into consideration, there is nothing to indicate that the applicants used any weapon, much less any fire arm in the present case. The CCTV footage, on which much reliance is placed by the learned APPs, at worst, indicates that the applicants were present outside the premises, where the co-accused persons allegedly opened fire on one of the victims. There is no allegation of any overt act on the part of the applicants, in respect of the assault launched on the first of the two victims.

12. As regards the second victim, the only material on which reliance was placed against the applicants, was the statement of one of the co-accused person, recorded under Section 27 of the Evidence Act. As to what would be the evidentiary value of such statement, would certainly be a matter for trial. But, in the absence of

corroborating material, it would not be appropriate to reach any *prima facie* conclusion at this stage itself against the applicants, with regard to their alleged involvement in respect of the death of second victim in the present case. Even if the statement upon which much reliance is placed on behalf of the prosecution, is to be taken into account, it is found that applicants held the second victim, while the main accused person strangled him to death. This Court is of the opinion that such material would not indicate a strong *prima facie* case against the applicants in the absence of corroborative material as also, in the absence of statement of any eye-witness against the applicants.

13. As noted hereinabove, at worst, the presence of the applicants at the premises where the incident took place, may be established on the basis of the CCTV footage. But, such material also does not indicate any overt act on the part of the applicants. Therefore, the learned counsel for the applicants are justified in contending that the case of the applicants herein, is on a better footing as compared to the case of Vishal @ Bobby Shankar Bhoir, who was granted bail by this Court by order dated 18.12.2024 passed in Bail Application No.1031 of 2024.

14. Apart from this, as noted by this Court in the said order while granting relief to the co-accused person, the aspect of long incarceration cannot be ignored. The Supreme Court, in the case of *Union of India vs. K. A. Najeeb* [(2021) 3 SCC 713], took note of a number of earlier precedents and found that even where special statutes were involved, wherein the applicant accused persons are required to satisfy higher threshold for being released on bail, the Constitutional Courts must exercise their power to release such

applicants on bail, when it is found that the applicant accused has suffered long incarceration and there is hardly any possibility of the trial being completed within reasonable period of time. The aspect of right to speedy trial as a facet of right to life under Article 21 of the Constitution of India, has been highlighted in the aforesaid judgments. The said position of law has been followed by the Supreme Court in the case of *Javed Gulam Nabi Shaikh vs. State of Maharashtra and another* (2024 SCC OnLine SC 1693), wherein the Supreme Court referred to a number of precedents, including in the cases of *Union of India vs. K. A. Najeeb* [(2021) 3 SCC 713], *Satender Kumar Antil vs. Central Bureau of Investigation and another* [(2022) 10 SCC 51] and *Kadra Pahadiya and others vs. State of Bihar* reported in [(1981) 3 SCC 671], to reiterate the position of law that the Constitutional Courts must exercise such power.

15. In the present case, the applicants have suffered incarceration for 7 years 9 months. Charge was framed in the year 2022 and while the prosecution intends to examine 94 witnesses, as on today, only 1 witness has been examined. Therefore, this Court is inclined to follow the position of law indicated by the Supreme Court in the aforementioned judgments.

16. In view of the above, the applications are allowed in the following terms:

- (i) The applicants Akash Kachru Ahire and Bala Ramchandra Bhopi, shall be released on bail in connection with FIR No.114 of 2017 dated 09.05.2017, registered at Dombivli Police Station, District Thane, on furnishing PR Bonds of ₹ 25,000/- each and one or two sureties each in the like amount to the satisfaction of the trial Court.
- (ii) The applicants shall remain outside the jurisdiction of Dombivli

Police Station, during the pendency of the trial.

- (iii) The applicants, upon being released on bail, shall report to Thane Crime Branch on the first Monday of every month between 10:00 a.m. and 12:00 noon during the pendency of trial.
- (iv) Upon release, within one week, the applicants shall inform the Investigating Officer as well as the trial Court about their contact numbers and residential addresses and update the same in case of any change.
- (v) The applicants 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 in writing.
- (vi) The applicants shall not tamper with the evidence of the prosecution in any manner. They shall not undertake any action that may influence the informant, witnesses and other persons concerned with the case.

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

18. 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.

19. Both the applications are disposed of accordingly.

(MANISH PITALE, J)