

Amberkar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 340 OF 2025

Dinesh Dilip Pawar	.. Applicant
Versus	
State of Maharashtra	.. Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 758 OF 2025

Siddesh Shankar Patil	.. Applicant
Versus	
State of Maharashtra	.. Respondent

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- Mr. Amit Munde a/w. Mr. Shivam Tiwari, Mr. Atif Farooqui, Mr. Jai Vora and Mr. Sunil Chavan, Advocates for Applicants.
 - Ms. Rajeshree Newton, APP for State.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 17, 2025

P. C.:

1. These two Bail Applications are filed under Section 439 of CrPC¹ seeking regular bail in connection with C.R. No.571 of 2018 registered with Pant Nagar Police Station for offences are under Sections 302, 363, 364, 365, 394, 201, 120B and Section 34 of IPC² and Section 3 and 181 of the Motor Vehicle Act. Applicant in Bail Application No.340 of 2025 – Dinesh Dilip Pawar arraigned as Accused No.2 who was arrested on 10.12.2018. Applicant in Bail Application

1 Code of Criminal Procedure, 1973.

2 Indian Penal Code, 1860

No.758 of 2025 – Siddesh Shankar Patil is Accused No.3 who was arrested on 12.12.2018. Complainant is the son of the deceased victim who had initially filed an FIR under Section 363 of IPC, remainder of charges were added at a subsequent stage.

2. It is the case of the prosecution that the present Applicants along with other co-accused hatched a conspiracy to assist Accused No.1 in killing the suitor who is the deceased victim since he had an oblique eye on his girlfriend. Indictment of Applicants is because they were allegedly seen accompanying him in the car alongwith Accused No. 1 and the victim about 72 hours prior to discovery of the decomposed body of deceased at a far of place. Accused No.1 has been released on bail by order dated 14.12.2024 on the ground of his long incarceration pending trial. Accused Nos. 4 and 7 have also been released on bail on similar grounds earlier.

3. Mr. Munde, learned Advocate appearing on behalf of Applicants would submit that Applicants were in custody for a period of more than six years and three months. He would bring to my attention the list of witnesses submitted by prosecution before the Trial Court and would submit that the list runs into about 180 witnesses and thus completion of trial would take a considerable time. He would draw my attention to the bail orders of other co-accused who have been released on bail and would urge the court to consider the present Bail

Applications on ground of parity and long incarceration of the Applicants pending trial. He would submit that evidence against Applicants is circumstantial in nature and their indictment is primarily based on 'last seen theory' alongwith Accused No. 1 who has been enlarged on bail. He would submit that the last seen theory is much earlier in point of time and therefore cannot be relied upon unless corroborated by any cogent and relevant *prima facie* evidence which is lacking. Hence he would persuade the Court to allow the Application.

4. Ms. Newton, learned APP would vehemently contend that the grounds raised by Mr. Munde be rejected in view of the complicity of the Applicants in the present crime. She would submit that Applicants were last seen with the deceased victim when he was kidnapped and made to sit in the car and taken along by the co-accused persons including the Applicants and thus a *prima facie* case has been made out against them. She would submit that benefit of parity should not be extended to the present Applicants since their role in the crime is distinct. She would submit that Applicants cannot be given the benefit of delay in trial since they are themselves partly responsible for the delay. She would thus pray for rejection of the Bail Applications.

5. I have heard the learned Advocates at the bar and with their able assistance perused the record of the case.

6. It is seen that Applicants have been arrested as far back in December 2018 and they have been in custody for a period of over 6 years and 3 months to this date, pending trial. The list of witnesses, even when shortened, is spanning to about 180 witnesses as per the prosecution statement. Charges have been framed as recently as on 19.05.2024 i.e. after a period of 5 years after the offence committed in December 2018 and charge-sheet being filed in the year of 2019. There is considerable delay in the trial proceedings in the Trial Court which is *prima facie* evident from the above facts. In such circumstances it is improbable for the trial to conclude in the near foreseeable future.

7. Applicants have undergone a considerable period of jail custody even before their conviction. The evidence against them is circumstantial in nature. It is one of the principle rules of criminal jurisprudence that an Accused is innocent until proven guilty, this rule cannot be taken lightly especially when liberty of an undertrial accused person has been at stake for over six years. Complicity of Applicants in the crime can certainly be proved at the trial after adequate evaluation of evidence and they may be subjected to appropriate punishment, if found to be guilty, but at this *prima facie* stage, I am inclined to consider Applicants' Application for bail solely due to their long incarceration, pending trial.

8. In the case of *Abdul Rehman Antulay & Ors. Vs R.S. Nayak & Anr.*³ the Supreme Court with respect to right to speedy trial flowing from Article 21 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)

9. In the following cases, the Supreme Court and this Court has considered long incarceration pending trial as a principal ground for granting bail to an under-trial accused in view of his right to speedy

3 1992 (1) SCC 225

trial and personal liberty emanating from Article 21 of the Constitution of India.

9.1. In the case of *Avinash Ashok Torane Vs. The State of Maharashtra*⁴, this Court (Coram: N.J. Jamadar, J.) while dealing with a bail application for offence under Section 302 of the IPC considering parity with another co-accused who was enlarged on bail considered the unlikelihood of completion of trial coupled with the period of long incarceration of 1 year 3 months of the Applicant therein and enlarged him on bail.

9.2. In the case of *Sonu Parmeshwar Jha Vs. The State of Maharashtra*⁵ this Court (Coram: M.S. Karnik, J.) was dealing with a bail application for offences under Sections 302 and 304(b) of IPC and considering the circumstantial evidence against the accused as well as his long incarceration of 1 year 7 months enlarged him on bail.

9.3. In the case of *Rup Bahadur Magar @ Sanki @ Rabin Vs. State of West Bengal*⁶, in a case under Sections 394, 395, 397, 307 read with 120-B of IPC, the Supreme Court granted bail to the accused considering long incarceration undergone by him of 2 years and 9 months.

4 Bail Application No.3535 of 2023 decided on 08.01.2024

5 Bail Application No.4122 of 2021 decided on 18.01.2023

6 Criminal Appeal No.4144 of 2024 decided on 04.10.2024

9.4. In the case of ***Santosh Ramprasad Hairijan Vs. The State of Maharashtra***⁷, in a case under Section 302 of IPC this Court taking into account long period of incarceration undergone by the accused of 3 years 4 months granted him bail.

9.5. In the case of ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Anr.***⁸, the Supreme Court while granting bail to an accused incarcerated for 4 years in paragraph Nos.16 and 17 held as under:-

“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 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.”

9.6. In the case of ***Balwinder Singh Vs. State of Punjab and Anr.***⁹, in a case under Sections 302 and 307 of IPC the Supreme Court granted bail to the accused who was behind bars for 4 years citing unlikelihood

7 Bail Application No.1819 of 2024 decided on 29.11.2024

8 (2024) 9 SCC 813

9 SLP (Crl.) No.8523 of 2024

of completion of trial in the near future as also on parity with the co-accused.

9.7. In the case of ***Roland Victor Monterio Vs. State of Maharashtra***¹⁰, this Court (Coram: N.J. Jamadar, J.) in a case under Sections 302, 304-B and 498-A of the IPC granted bail to the accused on account of his long incarceration of 4 years. Similarly in the case of ***Naresh Harishchandra Mali Vs. The State of Maharashtra***¹¹, 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.

10. In view of the above *prima facie* observations and considering the long incarceration of Applicants for more than 6 years and 3 months pending trial and the prospect of the trial being commenced and / or completed in the near foreseeable future being a distinct impossibility, both Applications are allowed on the following terms and conditions:-

- (i) Both Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.15,000/- each with one or two sureties in the like amount;
- (ii) Before their actual release from jail, Applicants shall

10 Bail Application No.1981 of 2023 decided on 11.01.2024

11 Bail Application No.3858 of 2022 decided on 27.07.2023

furnish their address where they propose to reside after their release from jail to the concerned Police Station and also to the trial Court;

- (iii) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;
- (iv) Applicants shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark their presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicants shall mark presence on the next working day;
- (v) Applicants 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 they do so, it will entitle the prosecution to apply for cancellation of this order;
- (vi) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicants shall not influence any of the witnesses or tamper with the evidence in any manner; and
- (viii) 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.PC. i.e. for cancellation of bail.

11. 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 in this order.

12. Bail Application Nos.340 of 2025 and 758 of 2025 are allowed and disposed.

[MILIND N. JADHAV, J.]