

Ajay

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

CRIMINAL BAIL APPLICATION NO. 1142 OF 2025

Ajit Anand Rane

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Sandesh B. Manikhedkar i./by Ms. Dipika Gupta, Advocates for Applicant.
- Mr. Dinesh J. Haldankar, APP for Respondent – State.
- API Nilophar Shaikh for DCB CID, Unit XII present.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 17, 2025.

P.C.:

1. Heard Mr. Manikhedkar, learned Advocate for Applicant and Mr. Haldankar, learned APP for Respondent – State.

2. Present Application has been filed by Applicant – Accused No.11 under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R. No.65 of 2011 registered by DCB CID, Unit XII, Mumbai arising out of C.R. No. 129 of 2011 registered with Kurar Police Station for offences punishable under Sections 302, 323, 342, 364 readwith 511, 395, 143, 147, 148, 149 readwith 120-B of the Indian Penal Code, 1860 (for short “**IPC**”). Applicant is arrested in connection with the present crime on 05.07.2011 and is incarcerated since 13 years 8 months and 13 days.

3. Briefly stated, FIR was lodged on 05.06.2011 for offences punishable under Section 323, 365 readwith 34 of IPC against 6 to 7 unknown persons with Kurar Police Station. On 06.06.2011 bodies of four deceased persons were found pursuant to which investigation was transferred to DCB CID. Record *prima facie* shows that the incident occurred on 04.06.2011 out of a quarrel with Accused No.1 while consuming liquor in the bar. It is seen that as a backlash and counterblast of the quarrel, Accused No.1 was assaulted. Accused No.1 therefore with the aid of his three friends who are the co-accused in the present crime assaulted the deceased persons after kidnapping them. Charge-sheet has been filed and trial has commenced in the Sessions Court. Prosecution desires to examine a probable 39 witnesses.

4. One of the co-accused namely Accused No.4 approached this Court for release on bail in Bail Application No.2008 of 2016 but in view of the gravity of the crime and custody of Accused persons from and on 08.06.2011 onwards this Court passed directions for expeditious disposal of the trial. The said order dated 20.02.2017 is appended at page No.761 of the Application. Reading of that order shows that this Court directed that the trial to be proceeded with recording of evidence forthwith and the learned Sessions Judge was directed not to grant any adjournment either to the prosecution or to the defence and shall ensure that the accused persons are produced

before the Court on each and every date. It is seen that specific direction was passed to conclude the recording of evidence as far as possible within ten months from the date of receipt of the order dated 20.02.2017. Those ten months lapsed on 20.12.2017.

5. There are a series of successive orders passed thereafter in successive Bail Applications filed by various co-accused including the present Applicants which are refused by the Court by giving directions for expeditious disposal of the trial. Thereafter it is only in Bail Application No.2139 of 2021 this Court by order dated 28.03.2022 granted bail to one of the Co-accused who had undergone 10 years and 9 months in custody pending trial. At that time this Court noted that trial was pending and 24 witnesses were examined and further 17 to 18 more witnesses were yet to be examined and opined that the trial is not likely to conclude in another one year and therefore the Applicant / Co-accused person therein was granted bail in view of long incarceration. Thereafter another co-accused filed a successive Bail Application No.2035 of 2022 in which this Court by order dated 22.09.2022 considering his long incarceration of 11 years 3 months and 15 days and after observing that 6 more witnesses were to be examined in the trial released the Co-accused / Applicant therein on bail.

6. Mr. Manikhedkar, learned Advocate for the Applicant has drawn my attention to the order dated 29.11.2024 passed in Criminal Revision Application No.335 of 2024 filed by the State which is appended at page No.794 of the Application. It is gathered from that order that because of the pendency of case in MCOC Special Case No. 576 of 2020 which was expedited by the Supreme Court, the trial in all other proceedings including the present case has been stayed thereby prolonging the completion of the trial. Thereafter it is seen that three other Co-accused persons approached this Court for grant of bail in Bail Application No.3989 of 2023, Bail Application No.1644 of 2024 and Bail Application No.3323 of 2023 and this Court by common order dated 16.12.2024 considered the merits of the matter as also long incarceration and the trial not being likely to be completed within a reasonable period of time released the said Co-accused persons on bail.

7. Thereafter it is seen that co-accused Nos.8 and 12 approached this Court seeking bail by Bail Application No.982 of 2025 and Bail Application No. 983 of 2025 and this Court considering the long incarceration of the Applicants therein enlarged them on bail by common order dated 07.03.2025. Furthermore, co-accused No.6 approached this Court for bail by Bail Application No.1049 of 2025 on the same ground and he was granted bail by order dated 12.03.2025.

8. In the above background, Applicant before me approached the learned Sessions Court for seeking bail but his Bail Application was dismissed considering the gravity of the alleged incident and the role of Applicant alleged by prosecution in the crime. Hence the Applicant is before this Court in the present Bail Application.

9. From the above, it is *prima facie* seen that since the trial in the present case is stayed due to the trial in the MCOC Special Case being completed as referred to hereinabove, there is certainty that in all likelihood the trial in this case will not be completed in the near foreseeable future. The period of incarceration undergone by the Applicant is undoubtedly long. Such a long period of incarceration pending trial impels the Court to consider the present Application especially in view of the orders which have been passed by this Court which are referred to and alluded to herein above. The right of Applicant to speedy trial and personal liberty envisaged under Article 21 of the Constitution of India comes to the fore for consideration in such facts.

10. Mr. Haldankar, learned APP for State has persuaded me to consider the gravity of the crime and the role attributed to the Applicant and would urge the Court to consider the same to reject the Bail Application.

11. With the able assistance of the learned Advocates at the bar, I have perused the record of the case.

12. The only reason which impels me to consider the present Application is the long incarceration of the Applicant in prison which is 13 years 8 months and 13 days. Without delineating any opinion on merits of the case, it is seen that investigation of the matter is completed and charge-sheet has been filed. Undoubtedly the Covid-19 period would have to be taken into account in the interregnum for the delay but still justification for such long pendency of trial, long incarceration and no reasonable certainty of the trial now being completed in the near foreseeable future due to its stay persuades me to consider the Application of the Applicant for bail.

13. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the Court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents are required to be considered in such cases.

14. It is seen that while dealing with Bail Applications the material available for consideration and adjudication is limited. It is brought to the notice of the Court that trials are taking perpetuity to

conclude and prisons are also simultaneously overcrowded in some segments. This Court regularly deals with Bail Applications of under-trials who have been in custody for long period and is also equally aware of the conditions of our prisons. To give an example in the city of Mumbai, recently in one of the cases before me, a Report dated 12.12.2024 made by the Superintendent of Mumbai Central Prison addressed to the Chief Government Pleader was placed before me by the Public Prosecutor which stated that the Mumbai Central Prison (Arthur Road Jail) is overcrowded beyond its sanctioned capacity by more than 5 – 6 times and every barrack sanctioned to house 50 inmates as on date houses anywhere between 220 – 250 inmates. Such an incongruity leads us to answer the proposition: ***“How can Courts find a balance between the two polarities?”***

15. Argued before me is a case concerning liberty of two under-trials who have been incarcerated for 13 years 8 months and 13 days, a situation impacting the rights of under-trial conferred by Article 21 of Constitution to speedy justice as also personal liberty. In so far as the power of High Court to grant bail is concerned, when the case is such that involves a question of personal liberty of an under-trial who is incarcerated for a very long period, the powers are wide and unfettered by conditions, the principle rule being that bail is the rule and refusal is the exception, allowing accused persons to better prepare their defence.

16. As far back as in 1923, it was held by the High Court of Calcutta in the case of *In Re: Nagendra Nath Chakravarti*¹ that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied while adjudicating Bail Applications is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be used as a tool to withhold as a punishment. The said proposition has been affirmed and upheld by the Supreme Court in its decision in the case of *Satender Kumar Antil Vs. Central Bureau of Investigation*².

17. The Supreme Court has also held in a series of judgements and orders that in situations where the under-trial-prisoner / accused persons have suffered incarceration rather long incarceration for a 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-trial on bail, as bail is the rule and jail is the exception.

18. In the case of *Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Anr.*³, the Supreme Court while granting bail to 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

1 1923 SCC OnLine Cal 318

2 (2022) 10 SCC 51

3 (2024) 9 SCC 813

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.”

19. In the case of *Chintan Vidyasagar Upadhyay Vs. The State of Maharashtra*⁴, in a case under Sections 302 and 396 of IPC the Supreme Court granted bail to the accused who had undergone 6 years of pre-trial incarceration. Similarly in the case of *Indrani Pratim Mukerjee Vs. Central Bureau of Investigation*⁵ the Supreme Court in a case under Section 302 of IPC granted bail to the accused, she having undergone pre-trial incarceration of 6 and a half years.

20. Considering the imprimatur of the Supreme Court in the aforesaid decisions, this Court in numerous cases has enlarged the accused indicted for offence under Section 302 of IPC considering the long incarceration and also ground of parity.

21. Next, this Court in the case of *Ganesh Madhukar Mendarkar (supra)* while referring to an article dated 01.05.2018 “*How prison*

⁴ SLP (CrL.) No.2543 of 2021 decided on 17.09.2021

⁵ SLP (CrL.) No.1627 of 2022

changes people”⁶ written by Dr. Christian Jarret, Editor of British Psychological Society's Research Digest published on BBC discussed the negative effects on a person's mental and physical health due to long incarceration and granted bail to the Accused who suffered incarceration of more than 9 years in a matter under 302 of IPC.

Paragraph No.29 of the judgment is relevant and reads as under:-

“29. In view of the above decisions and considering the long incarceration of the Applicant, I would like to highlight one more important issue which persuades me to consider the present case and that is the effect of long incarceration. Long incarceration can have many negative effects on a person's mental and physical health. Long incarceration can lead to post-incarceration syndrome which can include depression, anxiety and poor self-esteem. It can promote unhealthy behaviours like drug abuse. Inmates face social stigma which can disrupt relationships with family and friends. Incarceration persons often suffer long-term consequences from having been subjected to pain, deprivation and extremely atypical patterns and norms of living and interacting with others. Prima facie incarceration rather long incarceration exposes under-trial accused to carceral environment which can be inherently damaging to the mental health of the under-trial accused coupled with the appalling conditions in the prisons. Researchers have even theorized that incarceration can lead to Post-Incarceration Syndrome, a syndrome similar to PTSD.”

22. The period of incarceration in the present case is therefore considered as the sole ground for releasing the Applicant on bail. Hence, Bail Application is allowed subject to the following terms and conditions:-

⁶ Available at <https://www.bbc.com/future/article/20180430-the-unexpected-ways-prison-time-changes-people>

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs. 50,000/- each for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs. 50,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide the sureties as directed;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) 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 presence on the next working day;
- (v) 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;

- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (viii) 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; 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.

23. 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 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.

24. Bail Application No.1142 of 2025 is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay