



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.102 OF 2025

Rushabh @ Aayush s/o Ajay Tambe
Vs.

State of Maharashtra, through Police Station, Gittikhadan, Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R. S. Nayak, Counsel for the applicant.
Ms. Sneha Dhote, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 12/02/2025

1. The applicant came to be arrested on 19.09.2022, registered with Police Station Gittikhadan, Nagpur, for the offences punishable under Sections 143, 147, 148, 302 and 326 read with Section 149 of the Indian Penal Code and Section 135 of the Maharashtra Police Act and Sections 4 and 25 of the Arms Act.

2. The crime is registered on the basis of report lodged by Ankit Gajanan Kasar, aged about 19 years, who alleged that on 16.09.2022 at about 1.00 p.m. when he left from his village Raison Polytechnic and was standing at Pan shop along with Sahil Dable, Parvesh and Anesh Gund. At the relevant time one Dipanshu Pandit came there and started quarreling and after a short quarrel he left the spot. It is further alleged that the informant received a call from one

Aayush Thote, who informed that they have to go to the SFS College along with 5 to 6 boys as there was a quarrel starting between one Sahil with Aayush Thote. Immediately they gathered at SFS College, Hazaripahad at around 2.30 p.m., at that time Dipanshu Pandit came there with 7-8 students and assaulted the informant by means of chair. When the deceased intervened in the quarrel the present applicant took out the knife and gave a blow of knife on his abdomen, due to which the intervenor i.e. Harsh succumbed to the death. In the said incident, the present applicant has also gave a blow of knife on the thighs of the informant due to which he sustained the injuries. On the basis of the said report the Police have registered the crime against the present applicant.

3. Heard Mr. R.S. Nayak, learned Counsel for the applicant, who submitted that initially the applicant has filed Criminal Application (BA) No.778/2024 which came to be rejected, however, the liberty was granted to the present applicant to move after six months and the trial Court was directed to dispose of the trial within six months. The another Criminal Application (BA) No.15/2024 which was withdrawn on 01.02.2024 and at the relevant time also liberty was granted to file an application, if there is no substantial progress in the trial within six months. The Criminal Application (BA) No.620/2023

was also withdrawn with a liberty to approach this Court within a period of one year.

4. Learned Counsel for the applicant further submitted that the present application is filed mainly on the ground that despite the direction was given to the trial Court to proceed with the trial and make every endeavour to dispose of the trial from within six months. The trial is not commenced. The charge was already framed on 13.09.2024 but not a single witness is examined by the prosecution and the applicant cannot be incarcerated for an indefinite period. In view of that he be released on bail.

5. Learned APP strongly opposed the said application on the ground that six months period is not yet over. However, she admitted that the trial is not yet commenced. She further submitted that the involvement of the present applicant is revealed during the investigation. Thus, the statement of the injured witness sufficiently shows the involvement of the present applicant. Thus, considering the fact that the role of the present applicant is vital and considering gravity of the offence, the application deserves to be rejected.

6. After hearing both the sides and on perusal of the investigation papers, it reveals that as far as the involvement of the present applicant in the alleged offence in causing the death of the deceased

as well as causing grievous injuries to the injured is concerned, the specific role is attributed to the present applicant and his involvement is revealed. The present application is filed only on the ground of delay in trial. This aspect is considered by the Hon'ble Apex Court in the case of **Union of India vs. K.A. Najeeb**, reported in **(2021) 3 SCC 713** wherein it is held thus:

"It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."

7. Thus, the Apex Court has held that even where provisions of stringent Act, like the Unlawful Activities (Prevention) Act, 1967 (for short "UAPA"), are invoked, in a given case, benefit of bail can be

extended where there are grounds of violation of Part – III of the Constitution.

8. In another decision **Angela Harish Sontakke Vs. State of Maharashtra** reported in **(2021) 3 SCC 723**, wherein also the Apex Court has considered the aspect of delay in trial and held undoubtedly, the charges are serious but the seriousness of the charges will have to be balanced with certain other facts like the period of custody suffered and the likely period within which the trial can be expected to be completed.

9. In **Praveen Rathore Vs. State of Rajasthan and another** reported in **2023 SCC OnLine SC 1268** wherein also this aspect is considered and it is held that it is not in dispute that the petitioner, by now, has undergone more than four and a half years' of sentence. The instant case was adjourned on few occasions to enable the prosecution to examine the witnesses, who were stated to be the vital witnesses. Their deposition is also complete and the bail was granted.

10. Thus, considering the catena of decisions of the Hon'ble Apex Court wherein the right of the accused of speedy trial which is enshrined under Article 21 of the Constitution is considered and the accused are released on bail. Similar is the case in the present matter also the applicant is behind bar

since his date of arrest i.e. from 19.09.2022. Despite the trial Court was directed to dispose of the trial on various occasions there is no progress in the trial after the framing of the charge. The trial is proceeding with a snail's pace. Admittedly, the applicant cannot be kept behind bar for indefinite period. Therefore, even there is a sufficient evidence to show the involvement of the present applicant in the alleged offence, however, he cannot be incarcerated for an indefinite period as the trial is not yet commenced. There are several witnesses the prosecution intends to examine. By considering all these aspects, the applicant has made out a case for grant of bail. In view of that, I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) The applicant **Rushabh @ Aayush s/o Ajay Tambe** shall be released on bail in connection with Crime No.556/2022 registered with Police Station Gittikhadan, Nagpur, for the offences punishable under Sections 143, 147, 148, 302 and 326 read with Section 149 of the Indian Penal Code and Section 135 of the Maharashtra Police Act and Sections 4 and 25 of the Arms Act, on executing PR Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.
- (iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned, and shall not,

without written permission of the Court, change residence till final disposal of the case.

(iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(v) The applicant shall not leave the jurisdiction of Nagpur city without prior permission of the District Court, Nagpur.

(vi) The applicant shall regularly attend the Court and co-operate to complete the trial for the above offences. The applicant shall not seek unnecessary adjournments, except under extreme circumstances to the satisfaction of the trial Court.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)