



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

CRIMINAL APPLICATION (BA) NO. 704 OF 2025

Mohammad Adil @ Shahrukh Abdul Gaffar Vs State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. S.V. Sirpurkar, counsel with Mr. S.A. Kanetkar, counsel for applicant.
Mr. Anant Ghogare, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 25/07/2025.

1. The present application is filed by the applicant for grant of bail. The applicant came to be arrested on 01/10/2019 in connection with crime No. 386/2019 registered under Sections 143 147, 148, 302 read with Section 149 of Indian Penal Code, 1860.

2. The crime is registered on the basis of a report lodged by Shubham Nandlal Nandwanshi, on an allegation that on 30/09/2019 between 11.00 to 11.50 a.m., when he had been to Rehman Khan for playing gambling, at that time the present applicant came along with the weapons in their hands and assaulted the deceased by means of the said weapon, which resulted in the death of the deceased. On the basis of the said report, police have registered the crime against the present applicants. As far as the present application is concerned, which has been filed by the applicant primarily on the ground that since 2019, i.e., from

01/10/2019, he has been behind bars and even till date, charges have not been framed. Thus, there is an inordinate delay in trial, and therefore, the right of the present applicant as to the speedy trial enshrined under Article 21 of the Constitution of India is affected, and therefore, he be released on bail.

3. Heard learned counsel for the applicant, who submitted that in a catena of decisions, the Hon'ble Apex Court has identified the right of the speedy trial and also held that even irrespective of the nature of the crime, if the right of the accused of the speedy trial is affected, he is to be released on bail. In view of that, the application deserves to be allowed, and he be released on bail.

4. Learned APP strongly opposed the said application and submitted that considering the gravity of the offence, which shows that the present applicant and other co-accused with their common intention and common object assaulted the deceased by means of deadly weapons for a trifle reason and eliminated him. Thus, considering the same, the application deserves to be rejected.

5. On hearing both sides and on perusal of the investigation papers, as far as the involvement and the alleged offence is concerned, it is not disputed, as there are statements of the eyewitnesses, which shows the involvement of the present applicant in the alleged

crime. The applicant has mainly raised the ground of violation of his right as to the speedy trial enshrined under Article 21 of the Constitution.

6. In support of the said contention, learned counsel for the applicant placed reliance in the case of ***Javed Gulam Nabi Shaikh vs The State of Maharashtra and another [(2024) ALL MR CRI 2882]***, wherein the Hon'ble Apex Court has held that the right to a speedy trial of offenders facing criminal charges is implicit in the broad sweep and content of Article 21 of the Constitution of India. However, she has time made and the accused has a right to a speedy trial as enshrined under Article 21 of the Constitution of India.

7. He further placed reliance on the orders passed in various bail applications, including the Criminal Bail Application No. 689/2025, and submitted in all these applications, this Court as well as the Apex Court has considered the right to a speedy trial enshrined under Article 21 of the Constitution. Herein the present case, the applicant is behind bar since last seven years. The Roznama, which is placed on record, shows that for years together the applicant was not produced before the court. No steps are taken to produce him before the court, charges are not framed within seven years. Thus, the right of the present applicant as to the speedy trial enshrined under Article 21 of the constitution is affected.

8. Though the learned APP submitted that the gravity of the offence requires to be considered. Considering the fact that the involvement of the present applicant is revealed in the alleged incident. The Roznama shows that for approximately for two years, the applicant was not produced before the court, and no efforts were taken either by the prosecution or by the court to secure his presence before the court, and charges were not framed. The aspect of the right of the applicant/accused for a speedy trial is repeatedly considered by the Hon'ble Apex Court in the various judgments.

9. In the case of *Javed Gulam Nabi Shaikh* (supra), the Hon'ble Apex Court held that 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. In the case of *Sheikh Javed Ikbāl vs Ashpak Ansari in criminal appeal no. 2790 of 2024, decided on 18/07/2024*, wherein also the issue regarding the speedy trial was considered by the Hon'ble Apex Court, it was held that this court thereafter proceeded to hold

that Section 43-D(5) of the UAP Act does not oust. The ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Long incarceration with the unlikelihood of the trial being completed in the near future is good ground to grant bail.

11. Here in the present case also, the applicant is arrested on 01/10/2019, thereafter the charge-sheet is filed. From the Roznama, it reveals that approximately for two years, the applicant was not produced before the court, and even the charges are not framed till today. Thus, there is no progress in the trial. The Sessions Court has not taken any efforts to secure the presence of the accused before the Court, and the prosecution has also not taken any efforts to secure the presence of the accused as well as, no steps are taken to secure the presence of the accused to frame the charge. The learned trial Court has to take the efforts to secure the presence of the accused, especially when the accused are behind bars since long. Admittedly, the courts are not the silent spectators. The Roznama, which is placed on record, shows that the accused is not produced, but the Roznama nowhere reflects whether any efforts are taken or directions are given to the jail authorities to produce the accused or any effort is taken to secure the presence of the accused through video conferencing.

12. Thus, in view of the observations made by the Hon'ble Apex Court, 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 a serious one. Admittedly, the crime committed is serious, but in view of Article 21 of the Constitution, the applicant cannot be kept behind bar for an indefinite period, in view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order.

ORDER

- a] The criminal application is **allowed**.
- b] The applicant – ***Mohammad Adil @ Shahrukh Abdul Gaffar***, in connection with crime No. 386/2019 registered under Sections 143 147, 148, 302 read with 149 of Indian Penal Code, 1860, shall be released on bail on executing PR. Bond of Rs. 50,000/- with one solvent surety in the like amount.
- c] The applicant shall attend the concerned police Station twice in a month on 1st and 15th day of every month and the police

officer of the concerned police station shall record his presence.

- d] The applicant shall not enter into the vicinity of Paratwada, except attending the proceedings before the trial Court and attending the police station till culmination of the trial.
- e] The applicant shall furnished his detailed address along with the address proof wherein he is intending to reside after he is released on bail.
- f] The applicant shall not induce, threat or promise any witnesses in any manner, either through physically or through electronic media.
- g] The applicant shall attend the proceedings before the trial Court without seeking any exemption unless there are exceptional circumstances.
- h] Contravention of any of the condition would lead to the cancellation of bail.

Criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]