



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

CRIMINAL APPLICATION (BA) NO. 822 OF 2025

Shyam @ Swapnil Purushottam Nathe 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. R.R. Vyas, counsel for applicant.

Mr. Anant Ghongare, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 26/08/2025.

1. By this application, the applicant seeks regular bail in connection with Crime No.80/2020 registered with the non-applicant/police station for offences punishable under Sections 120, 120-B, 201, 302, and 403 read with 34 of the Indian Penal Code and under Sections 3/25, 5/27, and 7/27 of the Arms Act, 1959 and under Sections 47/177, 130(1)(2)/177, and 3/181 of the Motor Vehicles Act, 1988.

2. The applicant is arrested on 26.3.2020 and since then he is in jail.

3. The accusations against the applicant is on the basis of a report lodged by Police Constable Bhaskar Sangle. As per his report, on 21.2.2020, at about 10:00 pm, he was watching television and heard a noise like bursting of a cracker, and therefore, he came out of his house and saw a person was lying in front of the police quarters of Police Constable Dubey, and two persons

were fleeing away on a motorcycle from the spot of the incident. He immediately approached the police station and lodged the report, on the basis of which the police registered a crime.

4. During investigation, the name of the deceased was revealed as “Tushar Pundhkar”, who was an influential person being Former Head of the District Prahar Sanghatana, who contested Elections in the year 2019 for the Legislative Assembly from the Akot Constituency. It further revealed that the deceased, along with others, had committed the murder of one Tejas Sedani on 11.9.2013, for which he, alongwith others, was charge-sheeted for offences punishable under Sections 302, 307, 102, 147, 148, and 120-B read with Section 149 of the Indian Penal Code vide Crime No. 170/2013, and the sessions trial is pending against him. In order to take revenge for the death of a cousin brother, co-accused Pawan Sedani, alongwith the applicant and other co-accused, hatched a conspiracy to kill the deceased. Accordingly, the applicant executed act of eliminating the deceased by firing a bullet, and, therefore, he came to be arrested.

5. Learned counsel Shri R.V. Vyas, for the applicant, submitted that involvement of the applicant is entirely based on evidence of the complainant, who witnessed two persons fleeing away from the spot of the incident. He submitted that the applicant was arrested on 26.3.2020, and since then he is behind the bar.

There is no progress in the trial. He submitted that the earlier bail application bearing No. 526/2024 was also filed on the ground of delay in trial, but this court has directed the trial Court to dispose of the trial within nine months, and during nine months, only three witnesses had been examined. The prosecution has cited as many as 86 witnesses, and out of them, only 3 witnesses have been examined, therefore it would take an indefinite period to dispose of the trial, and the applicant cannot be kept behind the bar for an indefinite period. He also pointed out that initially the applicant was released on bail, and thereafter, his bail was cancelled. The order of cancellation of bail was challenged by the applicant in Special Leave to Appeal No. 5079 of 2022, wherein the Hon'ble Apex Court held that a chargesheet has been submitted and a specific role has been attributed to the petitioner in shooting the deceased. He submitted that now, after passing of the order by the Hon'ble Apex Court, two years have been passed and there is no progress in the trial.

6. In support of his contention, he placed reliance on the decision of (1) *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh*, reported in 2024 SCC OnLine SC 1755; (2) *Criminal Appeal arising out of Special Leave to Appeal (C.) No.7130/2024 (State of Uttar Pradesh and anr vs. Virendra Bahadur Katheria and ors)* decided on 15.7.2024, and (3) *Criminal Appeal arising out of SLP*

(Cri.) No.8781/2024 (Manish Sisodia vs. Directorate of Enforcement) decided on 9.8.2024.

7. Per contra, learned APP for the State submitted that the order of cancellation of bail was challenged by the applicant before the Hon'ble Apex Court, and the Hon'ble Apex Court refused to interfere with the order passed by this court. The material collected during the investigation shows a voluminous record of the case containing the evidence against the co-accused as well as the applicant, and from the set of evidence, prima-facie, it can be seen that the offence was committed in a pre-mediated manner. As far as the role of the applicant is concerned, a vital role is attributed to him in that he eliminated the deceased by firing a bullet towards him. There is no dispute that it is a heinous crime, and therefore application deserves to be rejected.

8. Having heard learned counsel for parties and perused material on record, it shows that undisputedly, the other co-accused are released on bail. Having regard to the evidence collected by the investigating agency, there is a prima facie reasonable grounds to connect the applicant with the alleged offence. The elimination of the deceased appears to be out of a gang war. The deceased was also involved in another gang who committed murder of brother of the co-accused. To take revenge for the same, the deceased was eliminated by hatching a conspiracy with co-accused Pawan.

Co-accused Alpesh Dudhe and the applicant were hired for eliminating the deceased by giving them Rs. 30,00,000/-. The amount was given to them to purchase a motorcycle as well as a firearm. Accordingly, the applicant procured the firearm. Two persons were witnessed by the complainant proceeding on the motorcycle. The firearm was seized during the investigation. The said firearm was forwarded to Ballistic Expert Opinion. The Ballistic Expert Report shows that a country-made pistol is in working condition. It is capable of chambering and firing 7.65 mm pistol cartridges. Residue of fired ammunition nitrate was detected in the barrel washing of Exhibit-1, showing that the pistol was used for firing prior to its receipt in laboratory. Three 7.65 mm pistol cartridges, one from Exhibit-4 and 2 from Exhibit-5, were successfully test-fired through countrymade pistol in Exhibit-1. Another report shows that the detection of metallic lead and copper in absence of blackening and powder residues around the periphery of the encircled shot hole on the clothes in Exhibits 1 and 2, i.e. Kurta and Sandow Banian, is consistent with the wipe and passage of copper jacketed bullet having been fired from beyond the power range of the weapon. The Postmortem Report also shows that a firearm wound was found on the person of the deceased, and death of the deceased is due to multiple firearm injuries. Thus,

involvement as far as the present applicant is concerned, which reveals from the investigation papers.

9. The Hon'ble Apex Court also observed that on going through the material on record, a specific role has been attributed to the petitioner in shooting the deceased and denying to interfere with the order of this court.

10. Now, another ground raised by the applicant is that there is a delay in the trial, and therefore, the right of the present applicant of a speedy trial enshrined under Article 21 of the Constitution is violated. The earlier bail application was also filed on the same ground bearing No. 526 of 2024, but the same was rejected, directing the trial Court to dispose of the trial within nine months. Now, the learned counsel for the applicant submitted that after the rejection of the earlier application by directing the trial Court to dispose of the trial within nine months, there is no substantial progress in the trial, and only three witnesses are examined.

11. Thus, this aspect is considered in the light of the Roznama, which is filed in the record, which substantiates the contention of the learned counsel for the applicant, and which shows that within nine months only three witnesses are examined before the trial court.

12. As per the right of the present applicant as to the speedy trial enshrined Article 21 of the constitution

is concerned, which is a fundamental right. The Hon'ble Apex Court in the case of ***Manish Sisodia vs. Directorate of Enforcement reported in 2024 SCC OnLine SC 1920***, as relied upon by learned counsel for the applicant, by referring the decision in the case of ***Javed Gulam Nabi Shaikh vs. State of Maharashtra and anr, reported in 2024 SCC OnLine Sc 1693***, 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.

13. In the case of ***Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh*** (supra), as relied upon by learned counsel for the applicant, also right of accused of speedy trial was considered and its another judgment in the case of ***Gurwinder Singh vs. State of Punjab and anr, reported in AIR 2024 SC 952*** was distinguished and it is held that this court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A Constitutional Court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it

finds that the right of the accused under-trial under Article 21 of the Constitution of India has been infringed.

14. Here, in the present case also, there were two gangs. The deceased committed the murder of one member of the other gang, and, therefore, the co-accused hatched the conspiracy and hired the applicant and other co-accused and in pursuance of the conspiracy, eliminated the deceased.

15. In the present case, the applicant is arrested on 26.3.2020, and chargesheet is filed on 9.6.2020. Roznama shows that after appearance of the accused, initially, the matter was not proceeded approximately for one year due to Covid Pandemic Situation. Thereafter, various accused persons preferred applications either for grant of bail or for discharge. The said applications were decided, and thereafter, the case was fixed for framing of charge. However, the charge could not be framed due to absence of parties. Now charge is already framed, and only three witnesses are examined. Thus, it is apparent that the trial is proceeding with a snail's pace. 86 witnesses are cited by the prosecution, admittedly, it would take an appropriate time to dispose of the trial.

16. In earlier bail application, this court had already considered that there is a delay in trial, but directed the trial to dispose of the trial within nine

months from today, but no such substantial progress is there, as far as the trial is concerned. It is well settled that the right of the accused as to the speedy trial enshrined in Article 21 of the Constitution is irrespective of the nature of the crime, and therefore, the applicant has made out a case for grant of bail. Accordingly, this application deserves to be allowed. Accordingly, I proceed to pass the following order.

ORDER

- a] The criminal application is allowed.
- b] The applicant- ***Shyam @ Swapnil Pursushottam Nathe*** shall be released on bail in connection with Crime No. 80 of 2020 registered at Police Station Akot for the offence punishable under Sections 302, 120, 120B, 201 read with Section 34 of the Indian Penal Code, 1860; Section 3/25, 5/27, 7/27 of the Indian Arms Act and Sections 47/177, 130(1)(2)/177, 3/181 of the Motor Vehicles Act, on executing PR. Bond of Rs. 1,00,000/- with one solvent surety in the like amount.
- c] The applicant shall attend the concerned police station thrice in a month on 1st, 15th and 25th of every month and the police officer of the concerned police station shall record his presence.

- d] The applicant shall attend the proceedings before the trial Court without seeking any exemption unless there are exceptional circumstances.
- e] The trial Court shall ascertain whether the ground, if any, raised by the applicant for his non-appearance on the adjournment is appropriate or not.
- f] The applicant shall not indulge himself in similar type of the activities, and a single registration of the offence would lead to the cancellation of bail.
- g] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- h] The applicant shall not enter into the vicinity of Taluka Akot except attending the Court proceedings before the trial Court.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]