



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

CRIMINAL APPLICATION (BA) NO.1004 OF 2024

Kapil Nandkishore Aakhade

Vs.

State of Maharashtra, through Police Station Samudrapur Hinganghat,
District Wardha

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

Court's or Judge's orders

Mr. Inamul Haque, Counsel for the applicant.

Mr. V. A. Thakare, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 17/01/2025

1. The applicant came to be arrested on 13.07.2022 in connection with the Crime No. 381/2022 registered at Police Station Samudrapur, District Wardha for the offences punishable under Sections 302, 307, 326, 354(D), 324, 341, 294, 323 and 506 read with Section 34 of the Indian Penal Code and Sections 3(1)/181, 236/177, 139/177 of the Motor Vehicle Act.

2. The crime is registered on the basis of report lodged by one Pranoti Purushottam Wankar on an allegation that she was having a love affair with the present applicant, but since last two years she was not in contact with him and she has broken the relationship with him, but he was following her. On 11.07.2022 when she had been to appear for her last

paper of B.Com. along with her brother, at the relevant time, the present applicant came to her college. She finished her paper at about 12.15 p.m. and was proceeding along with her brother, at that time, the present applicant followed them and thereafter, restrained them. He pushed them from the motorcycle and thereafter, the present applicant gave a blow of iron rod on the head of her brother and her brother has sustained grievous injuries and immediately admitted to the hospital. During the treatment, he succumbed to the death. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that since the date of arrest the applicant is behind bar and there is no progress in the trial. Considering there is a delay in trial, the applicant be released on bail. As far as the merits of the matter is concerned, he submitted that the involvement of the present applicant is not established as there is no *prima facie* material to show his involvement in the alleged offence. He is implicated falsely merely because the relationship with the sister of the deceased was broken. He further submitted that considering the catena of decisions of the Hon'ble Apex Court that when the trial is not concluded within a considerable period the applicant be released on bail. In support of his contention, he placed reliance on the order passed by the Hon'ble Apex Court in the

case of **Akshay Vs State of Maharashtra arising out of S.L.P. (Criminal) No.12487/2024 dated 27.09.2024** wherein considering the fact that the appellant has been incarcerated for a period of two years and two months and charges have not framed and he was released on bail. He further placed reliance on the decision of **Sheikh Parvez Vs. State of Maharashtra and another [Petition(s) for Special leave to Appeal (Crl.) No(s). 4762/2024] dated 07.06.2024** wherein also the applicant therein was released on bail on the ground of delay in trial.

4. Learned APP strongly opposed the said application on the ground that now the trial is already commenced and two witnesses are already examined. Thus, it is not that the trial is not commenced. He submitted that as far as the merits of the matter is concerned, only because the sister of the deceased i.e. informant has broken the relationship she was followed by the present applicant and she was followed by carrying the weapons in his hand and the deceased was assaulted by means of iron rod. The postmortem report shows that since the date of the receipt of the injuries till the date of death, the condition of the deceased was deteriorating. This incident is witnessed by the independent witnesses also. The death of the deceased is due to septicaemia in admitted case of aspiration pneumonia with head injury following

assault. He submitted that the incriminating weapon is also seized at the instance of the present applicant. Considering all these facts and considering the gravity of the offence, the application deserves to be rejected.

5. After hearing both the sides and perusal of the investigation papers, as far as the incident is concerned, there is no dispute as to the fact that there was a love relationship between the informant and the present applicant, but subsequently it was broken. As far as the incident is concerned, informant is the eye witness, who has stated that on the day of incident when she was returning along with her brother on the motorcycle after appearing for the examination, they were followed and the present applicant and his friend carried the weapon in their hands and the deceased was assaulted by means of iron rod. As deceased has sustained the grievous injuries, he was immediately admitted to the hospital. The medical treatment papers on record sufficiently shows that since the date of his admission in the hospital for treatment till his death, his condition was deteriorating. The incriminating weapon is also recovered at the instance of the present applicant. As far as the progress of the trial is concerned, the report of the concerned Sessions Judge was called which shows that now the trial is already commenced and two witnesses are already examined. The progress of recording the evidence of

PW-3 is in progress. Thus, trial is already commenced. As far as the observation of the Hon'ble Apex Court and the personal liberty enshrined under Article 21 of the Constitution of India is concerned, which 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. The decision in the case of **Union of India vs. K.A.Najeeb**, reported in **(2021) SCC OnLine SC 50** was distinguished by Two-Judge Bench of the Hon'ble Apex Court in the case of **Gurwinder Singh vs. State of Punjab**, reported in **(2024) SCC OnLine SC 109** and it is observed that in the case of **Union of India vs. K.A.Najeeb** (supra) this court considered that the appellant has been in jail for last five years which is contrary to law laid down in the case of **K.A.Najeeb**. This court was confronted with a circumstance wherein except the respondent-accused, other co-accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this court's decision to consider bail was grounded in the anticipation of the impending sentence that the respondent-accused might face upon conviction and since the respondent-accused had already served portion of the maximum imprisonment i.e. more than five years. He was released on bail. It is held that mere delay in trial

pertaining to grave offences as one involved in the instant case cannot be used as ground to grant bail.

6. In a subsequent decision, in the cases of **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh** in **Criminal Appeal 2790/2024 decided on 18.06.2024** by referring decisions in cases of **K.A.Najeeb** and **Gurwinder Singh**, the Hon'ble Apex Court held that. In **Gurwinder Singh** supra on which reliance has been placed by the respondent, a Two Judge Bench of this Court distinguished **K.A.Najeeb** supra holding that the appellant in **K.A.Najeeb** supra was in custody for five years and that the trial of the appellant in that case was severed from the other co-accused whose trial had concluded whereupon they were sentenced to imprisonment of eight years; but in **Gurwinder Singh**, the trial was already underway and that twenty two witnesses including the protected witnesses have been examined. It was in that context, the Two-Judge Bench of this Court in **Gurwinder Singh** supra observed that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail. It was further held 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. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, **K.A.Najeeb's** case supra being rendered by a three Judge Bench is binding on a Bench of Two-Judges.

7. Thus, having regard to the above discussion, the facts of the present case also show that the present applicant has played a vital role in the commission of offence. There is no dispute as to the fact of a right of accused of speedy trial and the right of life of person enshrined under Article 21 of the Constitution. But, considering that trial is already underway and two witnesses are already examined, the release of accused persons may be hurdle to dispose of the trial. In view of that, the application deserves to be rejected. At the same time, the trial Court requires to be directed to expedite the trial and dispose it of at the earliest.

8. In the light of the above, the application is rejected with the direction that the learned Sessions Court shall dispose of the trial at the earliest.

9. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)