



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

CRIMINAL APPLICATION (BA) NO.1161 OF 2024

Aman s/o Laxman Kalsarpe

Vs.

State of Maharashtra, through Police Station Officer, Gadchiroli Police
Station, District Gadchiroli

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

Court's or Judge's orders

Mr. Amol Hunge, Counsel for the applicant.
Ms. Sneha Dhote, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 24/01/2025

1. By this application, the applicant is seeking bail as he came to be arrested on 03.07.2021 in connection with Crime No.409/2021 registered with police station Gadchiroli, District Gadchiroli for the offence punishable under Sections 302 and 201 of the Indian Penal Code.

2. Learned Counsel for the applicant submitted that the implication of the present applicant is on the basis of the memorandum statement and the CCTV footage. It is further contention of the applicant that he is implicated merely because the mobile phone of the deceased was found along with the present applicant. As far as the actual incident is concerned, there is no direct evidence to connect the present applicant with the

alleged incident. The incident took place in the intervening night between 23.06.2021 and 24.06.2021. The entire case is based on the circumstantial evidence i.e. the CCTV footage and the memorandum statement of the co-accused as well as the present applicant. He submitted that except the recovery of the mobile phone from the present applicant which belongs to the deceased, there is no other material to connect the present applicant with the alleged offence. The applicant is arrested on 03.07.2021 and there is no substantial progress in the trial. He placed reliance on the decision of this Court in **Criminal Application (BA) No.1152 of 2024 [Prasanna s/o Venkat Reddy Vs. State of Maharashtra] decided on 12.12.2024**, wherein this Court on the basis of the decisions of the Hon'ble Apex Court in the case of **Javed Gulam Nabi Sheikh Vs. State of Maharashtra and another [2024 SCC OnLine SC 1693]** and **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh in Criminal Appeal No. 2790/2024 decided on 18.07.2024** submitted that the right of the present applicant as to the speedy trial is affected, and therefore, the applicant be released on bail.

3. Learned APP strongly opposed the application and submitted that the prosecution cannot be blamed for the delay in trial. There are several reasons due to which the trial is not commenced.

The muddemal is received recently. Learned APP also submitted that though due to the non receipt of the muddemal the witnesses are not examined. The charge is already framed and trial can be commenced at any time. She submitted that the involvement of the present applicant revealed from the memorandum statement of the accused which is recorded under Section 27 of the Indian Evidence Act and the mobile phone of the deceased was found along with the present applicant. Thus, there is a *prima facie* material to connect the present applicant with the alleged offence. In view of that, the application deserves to be rejected.

4. After hearing both the sides and on perusal of the investigation papers from which it reveals that the entire case is based on the circumstantial evidence. The circumstance that mobile phone of the deceased was found along with the present applicant and there is a CCTV footage as far as the involvement of the other co-accused is concerned. It further reveals that the applicant is arrested on 03.07.2021 and within three and half years there is no progress in the trial, even not a single witness is examined and the applicant cannot be kept behind bar for an indefinite period. Considering the ground raised by the applicant that there is a delay in trial, the progress of the trial which is submitted by the learned Counsel for the applicant as well as the learned APP which sufficiently shows

that trial is not yet commenced as none of the witnesses is examined. The Hon'ble Apex Court in both the judgments which are referred by the learned Counsel namely **Javed Gulam Nabi Sheikh Vs. State of Maharashtra and another Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh** (supra) wherein the aspect of and right of the speedy trial enshrined under Article 21 of the Constitution was considered and it is observed 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."

5. In the recent order also the Hon'ble Apex Court has considered this aspect in the case of '**X' Vs. State of Rajasthan & Anr. [Special Leave Petition (Criminal) No.13378 of 2024] dated 27.11.2024** wherein it is held that it is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed.

6. In view of the observations of the Hon'ble Apex Court and considering the fact that there is delay in trial and the right of the present applicant of a speedy trial in view of Article 21 of the Constitution is infringed and considering the fact that the applicant cannot be kept behind bar for an indefinite period, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

ORDER

(i) The application is allowed.

(ii) The applicant – **Aman s/o Laxman Kalsarpe** in connection with Crime No.409/2021 registered with police station Gadchiroli, District Gadchiroli for the offence punishable under Sections 302 and 201 of the Indian Penal Code, be released on bail on executing P.R. bond of Rs.50,000/- with one solvent surety of the like amount.

(iii) The applicant shall not enter into the vicinity of Gadchiroli except attending the Court proceedings before the Sessions Court, till culmination of the trial.

(iv) The applicant shall attend the proceedings before the Sessions Court without seeking any exemption unless there are exceptional circumstances.

(v) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case either personally or by way of electronic media.

(6)

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7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate