



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO.1164 OF 2024

Virendra Gopichand Khiyani

.vs.

State of Maharashtra, through PSO, Hinganghat, Wardha

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr Prakash Naidu, Advocate for the applicant
Mr N. B. Jawade, APP for the respondent/State

CORAM : G.A. SANAP J.

DATE : JANUARY 02, 2025

This is an application for bail by the applicant, who is accused No.1 in Sessions Case No. 85 of 2019 pending before the learned Additional Sessions Judge, Hinganghat. In this case, there are four accused. Out of four accused, three accused have been granted bail, considering the role attributed to them. Accused No. 1, against whom a specific role has been attributed in the murder of the deceased, has not been granted bail. This is the third application for bail before this Court by the applicant. The change in the circumstance sought to be placed on record is the delay in disposal of the trial despite the order of this Court dated 20.06.2022, directing the learned Judge to dispose of the case within nine months.

2. It is stated that though the case is part heard, there has been no substantial progress. The accused has been languishing in jail since 2019. The prosecution has cited 46 witnesses. The recording of the evidence may take its own time. On these averments, he applied for bail before the learned trial Court. The trial Court vide order dated 25.09.2024 rejected the application.

3. The learned APP has filed the say and opposed the bail application. It is contended that so far the prosecution has examined 11 witnesses. The prosecution is proposing to examine eight more witnesses. It is submitted that the recording of evidence of eight witnesses may not take much time. The case can be disposed of in the shortest possible time. It is further contended that the accused and the witnesses are residing in the same house. The possibility of tampering with the prosecution evidence therefore cannot be ruled out.

4. I have heard the learned Advocates for the parties. Perused the record and proceedings.

5. It is to be noted that after the order passed by this Court in Bail Application No. 459 of 2021 dated 20.06.2022 the trial has commenced. So far, eleven witnesses have been examined. The prosecution is

proposing to examine eight more witnesses, though in the charge-sheet 46 witnesses have been cited. The learned Judge has recorded the reasons for rejection of the application. It is observed in the order that the evidence of the material eyewitnesses is yet to be recorded. It is also observed that there is no guarantee that the accused would attend the Court in case he is released on bail. The apprehension *put forth* by the APP that in case the accused is released on bail, he would threaten the prosecution witnesses was found justifiable.

6. It is true that the opportunity was granted to the accused to move the application for bail in case the trial was not completed within nine months. On going through the record, I am satisfied that substantial progress has been made in the trial. The learned Judge, while rejecting the bail application, has highlighted the difficulties faced while conducting the trial. It is true that the learned Judge has nowhere observed that the accused was responsible for the delay. In the facts and circumstances, in my view, instead of granting bail to the accused in such a serious matter at this crucial stage of the trial, it would be just and proper to issue appropriate directions.

7. Accordingly, the application is **rejected** being without substance and merit.

8. The learned judge is directed to conduct the trial keeping in mind the mandate of Section 309 of the Code of Criminal Procedure (Section 346 of Bharatiya Nagrik Suraksha Sanhita, 2023). It appears that this mandate has not been properly considered by the learned Judge. The learned Judge shall complete the recording of the evidence of the remaining eight witnesses as early as possible by strictly adhering to the mandate of the above-stated provision.

9. The criminal application stands **disposed of**, accordingly.

(G. A. SANAP, J)

Namrata