

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

CRIMINAL APPLICATION (BA) NO. 177/2026

(Raj S/o Sudesh Rathod Vs. State of Maharashtra)

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

Court's or Judge's orders

Mr. C.B. Dharmadhikari, Advocate for applicant.
Mrs. Mayuri H. Deshmukh, APP for non-applicant/State.

CORAM: M. M. NERLIKAR, J.
DATED : 04/03/2026.

Heard.

2. By this application, the applicant is seeking bail in connection with Crime No.824/2021 registered with Police Station Yavatmal City, Dist. Yavatmal for the offence punishable under Sections 302 read with Section 34 of the Indian Penal Code.

3. Brief facts of the prosecution story is that the informant Dr. Surendra Ambadas Bhuyar lodged report on 11.11.2021 stating therein that on 10.11.2021 at around 9.10 p.m. a call was received on his mobile phone and he was informed that one of the student of his college has met with an accident and was hospitalized in serious condition. The informant was called in the hospital, upon reaching the hospital, he found injuries on the chest and thigh of the

victim namely Dr. Ashok Pal. Later, he succumbed to those injuries. It was suspected that injuries must have been caused because of attack by way of sharp weapon, hence the FIR came to be registered.

4. The learned counsel appearing for the applicant submits the applicant is in Jail since 13.11.2021 and he was a juvenile at the time of commission of offence. Amongst other grounds, the learned counsel has also raised the ground of delay in trial. The allegation against the applicant is that he is the main culprit behind the murder of deceased Ashok Pal which has been committed with the help of knife. After conducting inquiry under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 ("JJ Act") order under Section 18(3) of the JJ Act was passed. After preliminary assessment, the applicant was directed to be treated as an adult and accordingly the case was transferred to the Court having jurisdiction to try such offences. It is submitted that scope of Section 12 of the JJ Act cannot be restricted merely because order under Section 18(3) of the JJ Act was passed treating the applicant as adult. He further submitted that when the offence was committed by the applicant, admittedly he was

juvenile, however from time to time he was released by the Court below on interim bail for the purpose of examination. He submits that Section 21 of the JJ Act states that no child in conflict with law shall be sentenced to death or life imprisonment without the possibility of release under any law for the time being in force. According to him, this Court has, in detail, considered the bail application of juvenile in the case of ***Sandeep Ayodhya Prasad Rajak Vs. State of Maharashtra, in 2022 SCC Online Bom 1825*** and by considering the entire scheme of the Act, this Court has released the juvenile-applicant on bail under the provisions of Crpc. Even the present applicant is in jail since 13.11.2021, more than four years have lapsed since the applicant is in Jail and only the charges are framed on 28.12.2022. Since 2022, there is no progress in trial and there is no possibility for the trial to be concluded in the near future, therefore he is entitled to be released on bail.

5. On the other hand, the learned APP vehemently opposes the application and submits that this Court at earlier point of time on 26.06.2023 in criminal application No. 393/2023 has granted permission to withdraw the

application. However, the applicant was granted liberty to file fresh bail application after receipt of the Chemical Analyzer's (CA) report. She further submits that thereafter another Criminal Application No.1103/2025 was filed however even that application was withdrawn on 15.12.2025 with liberty to file fresh application. She submits that the applicant is a habitual offender. There are two crimes registered against him in the year 2017 and 2021. The applicant has also tried to escape from special home/ remand home/observation home, therefore FIR was registered under Section 224 of the Indian Penal Code on 02.11.2021, therefore she submits that considering the role played by the applicant in the offence of stabbing the deceased with the help of knife and committing serious offence of murder, the applicant may not be released on bail. So far as the ground of delay in trial is concerned, the learned APP submits that the charges are framed and the trial has commenced.

6. I have considered the rival submissions. I have gone through the earlier order passed by this Court. Admittedly, it appears from the record that the incident took place on 01.10.2021. At that time the applicant was

of 16 years of age. The applicant was arrested on 13.11.2021 and since then he is in Jail. I am of the considered opinion that the present application has to be considered only on the ground of delay in trial without going into other issues raised by the applicant since the applicant is in Jail for last more than four years.

7. Admittedly, the applicant has committed a heinous offence and the order under Section 18(3) of the JJ Act was passed. Earlier two bail applications were withdrawn, with liberty to approach afresh before this Court. There is no doubt in my mind that allegations against the applicant are serious in nature, however same is not relevant to consider the bail application on the ground of delay in trial as per the exposition of law laid down by the Apex Court. This Court cannot lose sight of the fact that the applicant is in jail since 13.11.2021. Further, the applicant was juvenile at the time of incident. The Hon'ble Supreme Court in the case of ***Javed Gulam Nabi Shaikh VS State of Maharashtra and Another, (2024) 9 SCC 813***; has in para no.17 held as under:

“17. 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.”

Further in case of ***Sheikh Javed Iqbal VS State of Uttar Pradesh, (2024) 8 SCC 293***; it has been held in para no.42, by the Supreme Court as under :

“42. 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-undertrial 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 (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.”

Even in the recent judgment in case of ***Anoop Singh .vrs. U.T. of J and K (SLP (Cri) No.1398/2026)*** vide order dated 03/02/2026 has in paragraph no.8 held as under :

“8. The report is extremely disturbing. The report highlights the sorry state of affairs at the end of the prosecuting agency. We are at pains to note that in last 7 years, the prosecution has been able to examine only 7 witnesses. Prosecution still intends to

examine 17 more witnesses. We wonder who are these 17 witnesses who are yet to be examined and if not examined, what would be the adverse effect on the case of the prosecution. However, the most unfortunate part of the report of the Trial Court is that past 82 hearings, not a single witness has been examined.”

8. Admittedly the charges are framed on 28.12.2022, however till today no witness is examined. The applicant cannot be kept behind bar for indefinite period. Considering the above, I am inclined to grant bail to the applicant on the ground of delay in trial. Hence the following order:-

ORDER

- (i) Criminal application is allowed and disposed of.
- (ii) The applicant/accused Raj S/o. Sudesh Rathod, be released on bail in connection with Crime No.824/2021 registered with Police Station Yavatmal City, Dist. Yavatmal for the offence punishable under Sections 302 read with Section 34 of the Indian Penal Code on his furnishing P.R. Bond of Rs. 25,000/- with one surety in the like amount.
- (iii) The accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.
- (iv) The accused shall provide his residential address and cell number to concerned Police Station and shall not change his place of residence without prior intimation to the concerned Investigating Officer.

(v) The applicant/accused shall attend each and every date of trial regularly. If he fails to attend the trial for two consecutive dates or fails to comply with the aforesaid conditions, his default would entails the State to ask for cancellation of bail.

(vi) The applicant shall continuously remain under the supervision of probation officer or any other person fit for the purpose as may be appointed by the learned Sessions Judge in that regard.

(vii) The applicant and his parents and everybody connected with him would be expected not to create any hindrance in the proper progression of the trial of the case and for that matter not try to contact or communicate with any of the witness related with this matter.

(M. M. NERLIKAR, J.)