

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

CRIMINAL APPLICATION (BA) NO. 341/2026
(Uttam @ Baba Sapan Senapati 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. A. M. Jaltare, Advocate for applicant.
Ms. T. H. Udeshi, APP for non-applicant/State.

CORAM: M. M. NERLIKAR, J.

DATED : 01/04/2026.

Heard.

2. By this application, the applicant is seeking bail in connection with Crime No.491/2019 registered with Police Station Kalamna, Nagpur for the offences punishable under Sections 302, 307, 341, 323, 120-B 143, 147, 148, 149 of the Indian Penal Code, Section 135 of the Maharashtra Police Act read with Section 4, 25 of the Indian Arms Act.

3. Brief facts of the prosecution story are that the informant alleged that they are a group of transgenders led by the Applicant who earn their livelihood by singing, dancing and collecting amounts in ritual events performed in the society. After completion of program, the money and food collected by everyone during the day is brought to the house of Applicant where it is distributed among everyone.

The present applicant had inquired with the group about offerings collected since some members were not placing the same offerings being offered to them before the applicant. It is alleged that the informant and some associates accepted that they were not placing the offerings before the applicant and they were taking them home. Therefore, as punishment they were restrained from earning daily livelihood for seven days. The deceased - Pravin suggested to the applicant that the informant and associates should be penalized by imposing fine instead of giving such harsh punishment. It is alleged that, thereafter it was decided that the old transgenders will not give offerings to the applicant due to which there was verbal argument between the applicant and the deceased. It is alleged that on 04/06/2019, when the informant and the deceased - pravin went to the house of the applicant after work, Pravin was assaulted by the applicant and co-accused by knife and therefore First Information Report ("FIR") came to be lodged.

4. The learned counsel for the applicant submits that the principal ground raised by the applicant is delay in trial. He submits that the applicant was arrested on

05/06/2019. Though the charge sheet was filed on 30/08/2019, the charges are only framed on 07/08/2024. Even thereafter there is no progress in the trial and now eight witnesses are examined by the prosecution. There are total 11 accused persons. He submits that two accused persons including the present applicant are behind bars. All others are released on bail. This Court passed the order on 07/08/2024 in Criminal Application (BA) No. 122/2024 by rejecting the application on the ground of delay in trial as well as on merits. He submits that much time has passed even after that passing of that order. He submits that considering the long incarceration that is from 05/06/2019 till today, the applicant deserves to be granted bail only on the ground of delay in trial.

5. On the other hand, the learned APP submits that the other co-accused persons those who were released on bail, are not cooperating in the trial. She submits that on one or the other pretext the matter is being adjourned. This Court has already considered the applicant's application on delay in trial, wherein this Court has declined to grant bail on the said ground. She further submits that there are criminal antecedents against the

applicant. The applicant is threatening the witnesses during the course of trial and therefore the applicant does not deserve to be granted bail.

6. I have considered the rival submissions. Admittedly, this Court by order dated 07/08/2024 passed in Criminal Application No. 122/2024 rejected the bail of the applicant on the basis of merits as well as on the ground of delay in trial. It would be necessary to reproduce paragraph Nos. 17, 18, 19 and 20 as under:-

“17. Another fact requires to be considered is, that since arrest of the applicant and other co-accused, there were attempts by the accused to delay the trial either by filing applications for discharge or by filing applications for bail. Not only this, some of accused made attempts to hold the trial by remaining absent. The report on record sent by learned Sessions Judge and certified copy of Roznama show that on every occasion, one or other co-accused remains absent and due to the absence of some of accused, charge could not be framed.

18. Thus, delay in the trial is neither caused by the prosecution nor by the court. However, the Presiding Officer took every effort to secure presence of accused and, thereafter, also charge

could not be framed.

19. *The Honourable Apex Court, in the case of Gurwinder Singh vs. State of Punjab and anr, reported in AIR 2024 SC 952, while considering the bail application under provision of the Unlawful Activities (Prevention) Act, 1967, considered "tripod test" (flight risk, influencing witnesses. tampering with evidence) and held that mere delay in trial pertaining to the grave offences as involved in the instant case cannot be used as a ground to grant bail.*

20. *Similar is the position in the present case as the offence alleged against the applicant is grave one. Insofar as the "tripod test" is concerned, admittedly, the applicant is at a flight risk and there is every reason to apprehend that if he is released on bail, he would not be available for trial. The applicant has already made attempts as to influencing witnesses and tampering of prosecution evidence."*

7. Admittedly, this order was passed on 07/08/2024. Thereafter, it appears that this Court has called the status report which shows that the trial is in progress and as many as eight witnesses are examined. The charge-sheet shows that 31 witnesses are going to be examined by the prosecution. The status report further shows that the witnesses are not attending the trial. I have carefully gone

through the entire status report. Principally, it speaks about either there is fault of the prosecution or the other co-accused persons. It appears that the Trial Court had also asked the Police inspector, Kalamna Police Station, Nagpur to secure the presence of all prosecution witnesses and accordingly the Court had fixed the program on 11/12/2025, 12/12/2025 and 16/12/2025 for the evidence of prosecution witnesses. Accordingly, it appears that eight witnesses are examined. However again thereafter there is no progress except issuance of summons. It further appears that even some of the accused persons are not attending the trial. However, it is very difficult to say that the applicant is at fault for the delay as the applicant is behind bars since the year 2019.

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.”

In case of **Pradeep Kumar @ Banu Vs. State of Punjab (Criminal Appeal No.1341/2026 arising out of SLP (Cri) No. 18775/2025 decided on 13/03/2026)**, has observed in paragraph Nos. 5, 6 and 7 which read as under:-

“5. Prosecution proposes to examine 23 witnesses to drive home the charges against the appellant, but none has been examined. Thus, the trial is likely to take some time to conclude.

6. Almost two years have passed since the appellant was arrested without trial having commenced and conclusion thereof nowhere being in sight. Incarceration without trial amounts to punishment.

7. Taking an overall view of the matter, we are of the considered opinion that further detention of the appellant pending trial is not necessary and, since the appeal deserves acceptance, the appellant may be admitted to an order for grant of bail.”

Therefore though eight witnesses are examined, one does not know how much time the prosecution is going to take to conclude the trial. Already the applicant is behind bars from six years and seven months. Considering all these factors, and the exposition of law laid down by the Hon’ble Apex Court in catena of cases, I am inclined to grant bail, hence the following order:-

ORDER

- (i) Criminal application is allowed and disposed of.
- (ii) The applicant/accused Uttam @ Baba Sapan Senapati be released on bail in connection with Crime No.491/2019 registered with Police Station Kalamna, Nagpur for the offence punishable under Sections 302, 307, 341, 323, 120-B 143, 147, 148, 149 of the Indian Penal

Code, Section 135 of the Maharashtra Police Act read with Section 4, 25 of the Indian Arms Act 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 a single date or fails to comply with the aforesaid conditions, his default would entail the State to ask for cancellation of bail.

(M. M. NERLIKAR, J.)