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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3249 OF 2024

Vikas Mahendra Gupta ... Applicant
Versus
The State of Maharashtra ... Respondent

Mr. Omneel A. Jadhav for the Applicant.
Mr. Babu V. Holambe-Patil, APP for Respondent-State.
Mr. Ganesh Ragunath Bhabad, PSI, Manpada Police Station,
Dombivali, Dist. Thane.

CORAM: MANISH PITALE, J.
DATE : 5th SEPTEMBER 2024

P.C. :

1. Heard learned counsel for the applicant and learned APP for the respondent-State.

2. The applicant is seeking bail in connection with FIR No.I-39 of 2016 dated 24th January 2016 registered at Manpada Police Station, Dist. Thane, for offences initially registered under Section 307 of the Indian Penal Code, 1860 (IPC). But, eventually the offence was converted to Section 302 of the IPC. Offences were also registered under the Arms Act, 1959. The applicant has remained incarcerated from the date of his arrest i.e. 24th January 2016.

3. The informant in the present case is the brother of the applicant and the allegation against the applicant is that he caused

the death of his sister-in-law, who is wife of the informant, by brutally assaulting her by means of a knife.

4. The learned counsel for the applicant has restricted his contentions in support of the present applicant on the aspect of long incarceration suffered by the applicant. It is submitted that the applicant has already suffered incarceration for a period of almost 8 years and 9 months. It is submitted that although the charge in the present case was framed as far back as on 11th April 2018, the trial did not commence for a considerable period of time and as on today, only 4 witnesses have been examined, while the list of witnesses cited in the charge-sheet shows 29 witnesses. It is submitted that in such circumstances, considering the pendency of matters and the heavy workload of pending trials before the concerned Court, there is no possibility of the trial being completed within a reasonable period of time.

5. Reliance is placed on recent orders passed by the Supreme Court, including order dated 3rd July 2024 passed by the Supreme Court in the case of *Javed Gulam Nabi Shaikh v/s. State of Maharashtra & Anr. (Criminal Appeal No. 2787 of 2024)*, to contend that this Court as a Constitutional Court may consider enlarging the applicant on bail.

6. On the other hand, the learned APP submits that there is no case for the applicant to be enlarged on bail on merits, as there is ample material to show his direct involvement in the murder of his

sister-in-law. It is submitted that the applicant has indeed suffered incarceration from the date of his arrest i.e. 24th January 2016. As on today, the trial has commenced and this Court could issue direction for expeditious completion of the trial.

7. The material on record shows that the applicant was arrested on the date of registration of the FIR i.e. 24th January 2016. He has admittedly suffered incarceration as an under-trial for almost 8 years and 9 months. This is a considerable period of time. It is found that the charge was framed in the present case as far back as on 11th April 2018. But, the trial did not commence for a long period of time even thereafter.

8. As on today, only 4 witnesses have been examined, while the charge-sheet cites 29 witnesses to be examined by the prosecution. Even if the practical reality is taken into consideration that fewer witnesses are actually examined during the course of trial, a substantial number of witnesses are yet to be examined. The workload of the concerned Court regarding pending trials is heavy and there is remote possibility of the trial being completed within the foreseeable future.

9. In similar circumstances, the Supreme Court in the case of *Chintan Vidyasagar Upadhyay v/s. The State of Maharashtra* (order dated 17th September 2021 passed in SLP (Criminal) No. 2543 of 2021) granted bail to the under-trial accused, despite taking note of the fact that the trial was already in progress and

only 12 out of 28 witnesses were left to be examined. In the case of *Indrani Pratim Mukerjea v/s. Central Bureau of Investigation & Anr.* (order dated 18th May 2022 passed in SPL (Criminal) No. 1627 of 2022), the Supreme Court again took into consideration the fact that only some of the witnesses out of the total number of witnesses were examined and the accused under-trial in the said case had already suffered incarceration for 6½ years. In the case of *Javed Gulam Nabi Shaikh* (supra), the Supreme Court referred to the recognized position of law that right to speedy trial of an under-trial accused forms part of his fundamental right to life under Article 21 of the Constitution of India. After referring to earlier precedents, in the said case, the Supreme Court went to the extent of holding that even in cases concerning special statutes where conditions for granting bail are stringent, the same cannot come in the way of Constitutional Courts to uphold the right of accused under-trial, who have suffered long incarceration and where the completion of trial within a reasonable period of time appears to be remote.

10. The present case does not concern offences under any special statute. This is a case involving offence under Section 302 of the IPC. The applicant does not have any criminal antecedents and *prima facie*, the offence appears to have been committed as an act of passion by the applicant. It is an admitted position that the applicant has already suffered incarceration for almost 8 years and 9 months. Only 4 out of 29 witnesses have been examined and

therefore, this Court finds that the trial being completed within a reasonable period of time may not be possible.

11. The applicant has made out a case in his favour purely on the ground of long incarceration and hence, this Court is inclined to allow the present application.

12. In view of the above, the application is allowed in the following terms:

- (a) The applicant shall be released on bail in connection with FIR No. I-39 of 2016 dated 24th January 2016 registered at Manpada Police Station, Dist. Thane, on furnishing P.R. Bond of ₹25,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.
- (b) The applicant shall not, in any manner, contact the informant or his family, upon being released on bail, during the pendency of the trial.
- (c) The applicant, upon being released on bail, during the pendency of the trial, shall not enter the jurisdiction of District Thane.
- (d) The applicant shall cooperate with the trial Court for expeditious trial and he shall attend each and every date, unless exempted by the trial Court, for reasons to be

recorded in writing.

- (e) The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses or any other person concerned with the case.
- (f) The applicant, upon being released on bail, shall place on record of the trial Court the details of his Contact Number and residential address with updates in case of any change.

13. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled. It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

14. The application is disposed of.

MANISH PITALE, J.