



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1239 OF 2023

Sumit Suresh More	...Applicant
<i>Versus</i>	
The State of Maharashtra	...Respondent

Mr. Shailesh D. Chavan a/w. Mr. Shrikant Panhale, Advocates, for the Applicant.
 Mr. P. H. Gaikwad, APP, for the Respondent-State.

CORAM: MADHAV J. JAMDAR, J.
DATED: 4th APRIL 2024

P. C.:-

1. Heard Mr. Chavan, learned Counsel for the Applicant and Mr. Gaikwad, learned APP for the Respondent-State.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973* ("CrPC"). The relevant details are as follows:-

1.	C. R. No.	10 of 2020
2.	Date of registration of F.I.R.	21/01/2020
3.	Name of Police Station	Wathar, District-Satara
4.	Section/s invoked	302, 435, 201, 109, 120-B and 34 of the <i>Indian Penal Code, 1860</i>

5.	Date of incident	20/01/2020
6.	Date of arrest	24/01/2020
7.	Date of filing of Charge-sheet	22/04/2020

3. The prosecution case is as under:-

- i. As per the prosecution case, the Applicant who is Accused No.1 has taken an ICICI Prudential Life Insurance Policy No.44420560 and was insured for an amount of Rs.1,50,00,000/-. There are total six Accused. Accused No.1 is the present Applicant who has taken the said insurance policy. Accused No.2 is a friend of Accused No.1. Accused Nos.5 and 6 are parents of Accused No.1 and Accused Nos.3 and 4 are brothers of Accused No.1. As per the prosecution case, in order to avail the benefit of the said insurance policy of the Applicant, all the Accused persons hatched a conspiracy by which an attempt was made to portray that Accused No.1 had met with an accident and in the said accident, the car in which Accused No.1 was travelling caught fire and that in the said accident, the said car as well as Accused No.1 got burnt and died.

- ii. The F.I.R. dated 20th January 2020 lodged by the maternal uncle of the Applicant-Jitendra Shrirang Kamble specifically states that the car belongs to Accused No.6 i.e. mother of the Applicant and the Applicant was using the said car and the said car was found burnt and it had a charred body of an individual. Said Informant also identified the body in the Government hospital as that of the Applicant. A post-mortem examination was conducted on the said dead body. The maternal uncle was shown the said dead body, which he identified as that of the Applicant.

- iii. As per the prosecution case, the family members of Accused No.1 performed the funeral of the deceased on 21st January 2020 and all the relatives were also informed by the family members of the Applicant about the death of the Accused No.1 i.e. the present Applicant.

- iv. Thereafter, on 27th January 2020 a supplementary statement of the Informant-Jitendra Shrirang Kamble was recorded and in the said statement he stated that on 24th January 2020 he was called at Police Station where he saw the

Accused No.1 present and alive and at that time, Accused No.1 informed the informant that the said dead body was that of neighbour-Tanaji Baba Awale and to claim the amount under the said ICICI Prudential Life Insurance Policy, he had murdered said Tanaji Baba Awale and his body was set on fire in the said car which belonged to his mother i.e. Accused No.6. This was done for the purpose portraying the death of the Applicant in the said accident and for the purpose of claiming the benefits of the insurance policy i.e. said amount of Rs.1,50,00,000/-.

4. Mr. Chavan, learned Counsel for the Applicant submitted that the Applicant is in custody since past 4 years and 2 months and that there is no further progress in the trial. He submitted that the supplementary statement of Jitendra Shrirang Kamble is an extra judicial confession made before the Police and therefore the same is not admissible in evidence. The case is based on circumstantial evidence. There is recovery of a wooden log and of clothes of the Applicant but there are no blood-stained clothes found therefore recovery is doubtful and doesn't support the prosecution case. He submitted that all the co-Accused have been

released on bail. He submitted that Accused No.6 who is the mother of the present Applicant was never arrested. The Accused No.5 who is the father of the present Applicant has been released on bail by Order dated 15th November 2021 passed by a learned Single Judge (Coram: V. G. Bisht, J.) in Criminal Bail Application No.605 of 2021. He submitted that the Accused No.2-Rahul Shinde who is the friend of the Applicant has also been released on bail by said Order dated 15th November 2021 and therefore parity is applicable to the present Applicant. He relied on paragraph Nos.7, 8, and 9 of the said Order and submitted that parity is applicable. He submitted that although there is recovery at the instance of Accused No.2 yet he has been granted bail. Therefore he is seeking benefit of parity to the present Applicant.

5. On the other hand, Mr. Gaikwad, learned APP for the Respondent-State strongly opposed the Bail Application. He submitted that Accused No.1 is the main Accused. He submitted that Accused No.1 has taken a life insurance policy of Rs.1,50,00,000/- and to avail the benefit of that policy, an accident was staged to portray that the Applicant had died in the said car accident and for which the Applicant had killed the deceased who

was his neighbour and then the dead body as well as the car was set on fire. He submitted that even the said car was also insured. He pointed out Recovery Panchnama of wooden stump as well as of the shoes, T-shirt and jeans trousers recovered at the instance of the Accused No.1. He pointed out the post-mortem examination report at page no.103 and submitted that the injuries recorded are head injuries as well as burn injuries. He also pointed out the statement of Tanaji Ramchandra Satre (Page-141), Alankar Suresh Jagtap (Page-142), Pravin Subhash Suryawanshi (Page-143), Santosh Laxman Kashid (Page-144), Nizamuddin Hasan Shaikh (Page-145), Rohidas Ankush Chavan (Page-147), Nanaso Shivaji Katte (Page-151), and Sushil Shivaji More (Page-157). He submitted that although the case is of circumstantial evidence, there are very strong circumstances against the Applicant. He submitted that the offence in question was committed with complete premeditation. It is not a case of a crime being committed without premeditation or on the spur of the moment. He submitted that the circumstances against the present Applicant are incriminating circumstances and that parity will not apply to the present Applicant on the basis of the Order of learned Single Judge (Coram:V. G. Bisht, J.) dated 15th November 2021. He

submitted that the role attributed to the father of the present Applicant i.e. Accused No.5 is totally different. He also submitted that even the role of Accused No.2-Rahul Shinde is also different and in any case, he has no motive to commit the offence in question. As far as the contention that there is long incarceration, he submitted that although as per the Charge-sheet there are 60 witnesses mentioned, however material witnesses are only around 20 to 22. He submitted that the State will take effective steps to conclude the trial as expeditiously as possible and preferably within a period of 15 months.

6. As per the settled legal position the following parameters are *inter alia* required to be taken into consideration for granting bail:-

- a) nature and gravity of circumstances in which offence was committed;
- b) position and status of accused with reference to the victim and the witnesses;
- c) likelihood of accused fleeing from justice;
- d) likelihood of accused tampering with witnesses;
- e) history of the case as well as of its investigation.

It is also a settled legal position that the Court is not required to enter into a detailed analysis of the evidence in the case at the stage of consideration of Bail Application.

7. The Hon'ble Supreme Court in the decision of *Ram Govind Upadhyay v. Sudarshan Singh*¹ has held as follows :-

“4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

*(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but **there ought always to be a prima facie satisfaction of the court in support of the charge.***

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the

¹(2002) 3 SCC 598

accused is entitled to an order of bail.”

(Emphasis added)

8. As far as merits of the matter are concerned, it is true that the Court is not required to meticulously consider the material on record at the stage of granting bail. However, for examining the case for grant of bail on the touchstone of above parameters, some factual aspects are required to be taken into consideration.

9. The factual position on record shows that the although the said car used in the crime, belonged to the mother of the Applicant, it was actually used only by the present Applicant. The material on record further shows that the said car was found to be completely burnt and one person who was occupying the said car was also found to be completely charred. During investigation it was found that the said body was of the Applicant's neighbour - Tanaji Baba Awale.

10. Apart from that, there is recovery of shoes, T-shirt and jeans trousers at the instance of the present Applicant which have an

odour of petrol. The relevant portion of Recovery Panchnama reads as under:-

“माझ्या अंगावर कपडे व बुट मी या ठिकाणी रोडच्या कडेला असलेल्या दरीमध्ये टाकुन दिली आहेत ती पोलीसांच्यासह उतरून सदरची कपडे, व बुट ओळखुन काढुन दिली त्याचे वर्णन खालीलप्रमाणे

२) ००१०० दोन खाकी कलरचे चैन व नेस असलेले चामडी बुट सदर बुटाचे खालील बाजूस पागळलेले प्लास्टीक ठिकठिकाणी चिकटलेले व पेट्रोलचा वास येत असलेले दोन चामडी बुट जु.वा.कि. अ.

३) ००१०० एक काळे रंगाचा व्ही गळयाचा टी शर्ट हाफबाहयाचा त्याचे कॉलरजवळ पांढ-या स्त्रीकरवर **INKST DENIM** असे स्टीकर असलेले सदर टी शर्टच्या उजवे हाताचे बाहीत व टी शर्टच्या खालच्या पुढील व मागील बाजूस प्लास्टीकचे जळालेले अवशेष चिकटलेले पेट्रोलचा वास येत असलेले टी शर्ट जु.वा.कि.अ.

४) ००१०० एक फिक्कट राखाडी जिन्सची पॅन्ट तिचे कमरेवर पाठमागे चामडी स्त्रीकर व स्त्रीकरवर मध्यभागी नक्षी असलेली व बॉटमजवळ जळालेली जिन्सची पॅन्ट सदर पॅन्टच्या मांडीवर दोन्ही बाजूस व पाठीमागे दोन्ही बाजूस खिशे असलेली जिन्सची पॅन्ट जु.वा. कि.अ.

येणेप्रमाणे वरील वर्णनाचे टी शर्ट पॅन्ट व बुट आरोपीने ओळखुन काढुन दिले ते जप्त करून त्यावर कागदी सिल लावुन पोलीसांनी ताब्यात घेतली.

सदरचा पंचनामा आम्ही पंचांनी प्रथमपासुन अखेरपर्यंत हजर राहून पाहिले ऐकले दिसते परिस्थिती प्रमाणे बरोबर लिहला आहे.

हा पंचनामा लिहला.”

The English translation of the relevant portion of the said Recovery Panchnama reads as under:-

“.....he along with the Police descended up to some distance in the said gorge located by the side of the road, identified the said clothes and shoes and produced the same. The description thereof is as under:

2)	00100	:	A pair of 'Khaki' coloured leather shoes , having a chain and a lace thereto, having melted plastic got stuck at various places to the bottom of the said two shoes. The shoes are smacking of petrol. Old, in use. Value approximately.
3)	00100	:	One Black coloured, 'V' neck, half sleeves T-shirt , having a white coloured sticker thereto with a name "IMKST DENIM" printed thereon near its collar, having the residue of burnt plastic got stuck to the right hand sleeve of the said T-shirt and also at the front and rear lower portion of the T-shirt. The T-shirt is smacking of petrol. Old, in use. Value approximately.
4)	00100	:	One light ash-coloured Jeans Pant , having a leather sticker at its waist with a design at the centre portion thereof, having two side pockets at its thigh portion and two back pockets and having got burnt near its bottom. The Jeans Pant is old, in use. Value approximately.

Thus, the Accused has identified the T-shirt, Pant and Shoes of the aforesaid description and has produced the same. Police have seized the same, affixed paper seals thereto and have taken the same in their possession.

Thus, we, the Panch Witnesses have remained present from commencement of the Panchanama till its conclusion and have drawn up the same in writing as per the state of affairs seen and heard by us.

The Panchanama is drawn up as mentioned above.”

11. Apart from the above articles, the Police, during the investigation, have recovered the said insurance policy issued by

ICICI Prudential Life Insurance in favour of the present Applicant and a document in respect of policy of the car has also been seized.

12. There are various witnesses who have seen the Applicant with the deceased. There are many other incriminating circumstances. However, I have set out the circumstances only to record *prima facie* satisfaction in support of the charge.

13. In the present case, admittedly the offence is *inter alia* under Section 302 of the *Indian Penal Code, 1860* with minimum punishment prescribed as imprisonment for life. The offence is very grave and serious. It is a pre-planned crime. To avail the benefit of the life insurance policy of Rs.1,50,00,000/-, an innocent person has been killed to portray that Accused No.1 had met with an accident and in the said accident, the car in which Accused No.1 was travelling caught fire and that the said car as well as Accused No.1 got burnt.

14. Thus, *prima facie*, there is material against the Applicant. The manner in which the offence was committed clearly shows

that there is a likelihood of the Accused, both, fleeing from justice and tampering with witnesses.

15. Insofar as the submission of Mr. Chavan, learned Counsel for the Applicant that parity is applicable, it is required to be noted that the role of the present Applicant is totally different from the role of the other Accused. The other Accused i.e. Accused Nos.3 and 4 who are brothers of the Applicant, and Accused Nos.5 and 6 who are parents of the Applicant, are not directly involved in the commission of the offence in question i.e. of the murder of the deceased. As far as Accused No.2-Rahul Shinde is concerned, a learned Single Judge (Coram: V. G. Bisht, J.) has recorded the following reasons in paragraph Nos.7, 8, and 9 of the Order dated 15th November 2021 which read as under:-

“7 Perused the investigation papers. Prima-facie, there may be substance in the submission of the learned APP that the applicant in BA No.605 of 2021 might be knowing on the date of funeral that it was the dead body of Tanaji Baba Awale and not his son. But that circumstance in itself would not be sufficient to prove that the informant in any manner was responsible for the death of Tanaji Baba Awale. On the contrary, if the statement of informant dated 27/01/2020 is read carefully then it would be seen that in the police station the main accused, namely, Sumit More made an extra-judicial

confession that it was he, who in order to claim his insurance policy, committed murder of Tanaji Baba Awale and then put his body in the car and set it on fire. This so called extra judicial confession prima-facie is not reliable for the reason that it was made in the police station. It is also interesting to note here that if we rely this extra-judicial confession for the sake of argument then the main accused Sumit More nowhere disclosed that he committed murder of Tanaji Baba Awale with the help of applicant, namely, Rahul Pandurang Shinde (BA No. 1581 of 2020).

8 Admittedly, there is disclosure statement of applicant Rahul Pandurang Shinde (BA No. 1581 of 2020) and pursuant to that statement he showed the place from where lighter, plastic can and petrol were procured by him. But this circumstance alone will not fasten any criminal liability and enable this Court to form a prima-facie opinion that he was involved in committing the murder of Tanaji Baba Awale.

9 Similarly, I have also gone through the statements of prosecution witnesses as pointed out by the learned APP. The statement of Nizamuddin Shaikh shows that on 19/01/2020 Rahul had been to his shop and had purchased two lighters. The statement of Rohidas Ankush Chavan shows that on 21/01/2020 Rahul Shinde had visited his house along with his friend. Lastly, the statement of Nanaso Shivaji Katte shows that on 23/01/2020 that a person visited his shop in order to get the amount Rs.6000/- transferred to a particular account number.”

(Emphasis added)

16. It is important to note that the learned Single Judge has stated that the supplementary statement of the informant recorded under Section 164 of the CrPC is an extra-judicial confession made by the present Applicant and therefore the same is not reliable as the same has been made in the Police station. In any case, what the learned Single Judge has recorded is that even in the said extra-judicial confession, there is no role attributed to Accused No.2-Rahul Shinde. The learned Single Judge has also relied on the recovery shown at the instance of Accused No.2-Rahul Shinde. However, it is to be noted that the recovery at the instance of Accused No.2 is entirely different from the recovery at the instance of the present Applicant. The recovery at the instance of the present Applicant is already set out herein above. It is very clear that the paragraph Nos.7, 8, and 9 of Order dated 15th November 2021 on which Mr. Chavan, learned Counsel has heavily relied, and by which bail was granted to Accused No.2-Rahul Shinde i.e. friend of the present Applicant and to Accused No.5-father of the present Applicant, is from the perspective of the involvement of Accused Nos.2 and 5 in the offence in question. Therefore, it is very clear that the said Order will not be useful to claim benefit of parity to the present Applicant. As already noted herein above, the

present Applicant has been attributed with the main role in the offence in question. The said ICICI Prudential Life Insurance policy was registered in the name of the present Applicant. Although there is substance in the contention of Mr. Chavan, learned Counsel for the Applicant that an extra-judicial confession is a weak piece of evidence and in this particular case, the extra-judicial confession, which is reflected in the supplementary statement of the Informant, has been made within the Police Station, however, it is to be noted that the case of the prosecution does not completely or solely rest on the said extra-judicial confession. There are several incriminating circumstances against the present Applicant, some of which are indicated herein above.

17. Thus, by applying the aforementioned well established parameters of grant of bail, no case is made out for granting bail.

18. Perusal of the record shows that the incident in question occurred on 20th January 2020, the Applicant was arrested on 24th January 2020, and the Charge-sheet was filed on 22nd April 2020. There is some substance in the contention of learned Counsel for the Applicant that there is delay in the trial. However, it is to be

noted that the right of speedy trial is well established and therefore Section 436-A was inserted in the CrPC by Act 25 of 2005 and the same has come into effect from 23rd June 2006. Section 436-A of CrPC reads as under:-

“436-A. Maximum period for which an undertrial prisoner can be detained.— Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

Thus, what is contemplated by Section 436-A of the CrPC is that in case an under-trial prisoner has undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he or she shall be released by the Court on his or her personal bond with or without sureties. In fact, Section 436-A of the CrPC also contemplates that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him or her on bail instead of the personal bond with or without sureties.

19. However, it is required to be noted that no straitjacket formula is prescribed for holding that there is long incarceration. The same depends on several factors. The criteria laid down under Section 436-A of CrPC is one of the guiding factors to be taken into consideration. In any case, while determining the same, quantum of punishment is required to be taken into consideration. It is further significant to note that Section 436-A of the CrPC specifies that even if an under-trial prisoner has completed half of the punishment, then also, for the reasons to be recorded in writing,

the Court can order the continued detention of the under-trial prisoner.

20. In the present case, admittedly the offence is *inter alia* under Section 302 of the *Indian Penal Code, 1860* with minimum punishment prescribed as imprisonment for life. The Applicant is incarcerated since about 4 years and 2 months and therefore Mr. Chavan, learned Counsel for the Applicant is correct in contending that there is a delay in conducting the trial. However, as noted herein above, the offence is very grave and serious. It is a pre-planned crime. To avail the benefit of life insurance policy of Rs.1,50,00,000/-, an innocent person was killed to portray that the Accused No.1 had met with an accident and that in the said accident, the car in which Accused No.1 was travelling, caught fire and the said car as well as Accused No.1 got burnt. Section 436-A of the CrPC recognises the right of speedy trial and in case of violation of the same, it provides for the release of the under-trial prisoner after completion of one-half of the maximum period of imprisonment. As noted herein above, Mr. Gaikwad, learned APP states that about 20 to 22 witnesses will be examined in the trial

and effective steps will be taken to conclude the trial within 15 months.

21. Accordingly, the Bail Application is rejected.

22. However, it is required to be noted that the learned APP has submitted that effective steps will be taken for conclusion of the trial within a period of 15 months. Therefore, it is clarified that, if there is no substantial progress in the trial even after a period of 15 months, then the Applicant is at liberty to file a fresh Bail Application.

23. It is clarified that observations made herein are *prima facie*, and the Trial Court shall decide the case on its merits, uninfluenced by the observations made in this order.

[MADHAV J. JAMDAR, J.]