

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1694 OF 2019

Sachin Atmaram Vartak, Age 57 years,
Occ.Business, R/o.Avighna Bungalow,
Sakai Nagar, Village Umela, Naigaon (W),
Tal.Vasai, Dist.Palghar.

Presently lodged in Thane Central Prison.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Subhash Jha with Mr.Hare Krishna Mishra i/by Law Global for
Applicant.

Mrs.PPShinde, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 14th October 2019

PC :

1. This is the second application for bail before this Court. In view of order dated 16th July 2019 passed by the regular Court, the application was listed before me. The previous application viz Bail Application No.975 of 2018 was rejected by me vide order dated 4th February 2019.

2. The applicant is seeking bail in CR No.II-7/2016 investigated by Palghar Police Station for offences under Sections 8(c), 22, 29 and 27A of Narcotics Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

3. The case of prosecution is that information was received through intelligence by ATS, Ahmedabad which was transmitted to Superintendent of Police, Palghar and pursuant to that the raid was

conducted on 19th May 2016. A farm house situated at Village Gaurpur, Tal.Wada, District Palghar was raided. There was seizure of 550 kg 148 grams of Methaqualone powder. Accused no.1 was arrested on 20th May 2016. Accused Nos.2 and 3 were arrested on 24th May 2016. Applicant was arrested on 25th May 2016. The value of contraband was around Rs.27,50,74,000/-. Raw material to be used for preparing the contraband valued at Rs.1,54,550/- was also recovered. Methaqualone powder weighing 3 kg 156 grams valued at Rs.15,78,000/- was also recovered from residence of accused no.1. Accused nos.5 and 6 were arrested on 31st May 2016.

4. Learned counsel for applicant Mr.Jha submits that the applicant is in custody from 25th May 2016. The trial has not commenced. The applicant is languishing in jail for more than three years and taking into consideration the mandate of Article 21 of the Constitution of India, the applicant would be entitled for bail. It is further submitted that the issue with regards to violation of Article 21 of Constitution of India at every stage of criminal proceedings, inasmuch as during the stage of investigation, post investigation, during the course of trial and even during pendency of appeal preferred by an accused, is no more res-integra and there are several judicial pronouncements of the Apex Court wherein only on the ground of there being prolonged and protracted delay in trial, criminal proceedings have been quashed and set aside or bail has been granted to the accused. It is submitted that in spite of embargo u/s 37 of NDPS Act, the accused were granted bail in some cases on the ground of delay in conducting the trial. The applicant cannot be incarcerated in custody for indefinite period. Learned counsel relied upon Roznama of the proceedings and contended that even the charge has not been framed against the accused. The prosecution

intends to examine several witnesses and it is not clear as to how long it would take to conclude the trial.

5. Mr.Jha relied upon several decisions of the Supreme Court and the High Courts in support of the ground that applicant is entitled for bail for being in prolonged custody from the date of arrest. He relied upon following decisions :

1. Thana Singh Vs. Central Bureau of Narcotics – (2013)2-SCC-590
2. Hussain and others Vs. Union of India – (2017)5-SCC-702
3. Radheyshyam @ Raju Rathore Vs. Union of India – Cri.M.P.No.2147/2017 in Criminal Appeal No.799/2017, dated 26-7-2017.
4. Akatari Bi (Smt) Vs. State of M.P. - (2001)4-SCC-355
5. Shaheen Welfare Association Vs. Union of India and others – (1996)2-SCC-616.
6. Vivek Kumar Vs. State of U.P. - (2000)9-SCC-443
7. Deepak Shubhashchandra Mehta Vs. CBI and another – (2012)4-SCC-134.
8. Pankaj Kumar Vs. State of Maharashtra and others – (2008)16-SCC-117.
9. Manoj Kumar Vs. Director of Revenue Intelligence – (2015)-SCC Online Del 7830 : (2015)-DLT-112.
10. Mukesh Kumar Vs. State of Punjab – 2016-SCC Online-P&H-6408.
11. Arun Singh s/o. Suraj Kumar Singh @ Sura Singh Vs. State of Chhattisgarh – HC of Chhattisgarh Bilaspur – MCRC No.3900 of 2018.
12. Vikram s/o Munnalal Dhakkad Vs. State of M.P. - HC of Madhya Pradesh, Indore – MCRC No.18330 of 2017.
13. Shyam Babu Singh S/o Shambhu Singh Vs. State of Chhattisgarh – HC of Chhattisgarh, Bilaspur, MCRC No.3942 of 2018.

14. Hemraj s/o Kallash Vaishnav Vs. State of M.P. - HC of Madhya Pradesh, Indore, MCRC No.19026 of 2017.
15. Hariprasad @ Harish Vs. Central Bureau of Narcotics – HC of Madhya Pradesh, Indore, MCRC No.17732 of 2017.
16. Sanjay Satpure s/o Dilip Rao and others Vs. State of Chhattisgar – HC of Chhattisgarh, Bilaspur, MCRC No.5401 of 2019.
17. Rahul Honade s/o Vijay Rao Honade Vs. State of Chhattisgarh – HC of Chhattisgarh, Bilaspur, MCRC No.4582 of 2019.
18. Veerendra Singh Vs. State of M.P. - High Court of Madhya Pradesh in MCRC No.11683 of 2018.
19. Order dated 6th November 2017 passed by Madhya Pradesh High Court in MCRC No.10249 of 2017.

6. Learned APP submitted that the offence is of serious nature. The previous application for bail has been rejected by this Court by assigning detailed reasons. There is no change in circumstance to reconsider the relief of grant of bail. The trial would proceed as soon as Special Public Prosecutor is appointed for conducting trial which would be done in a short span of time. The decisions relied upon by learned counsel for applicant are not applicable in this case. Two cases were registered against the applicant vide CR No.120 of 2012 with Manikpur Police Station, and CR No.329 of 2012 with Valiv Police Station. Learned counsel for applicant contends that the second case has been quashed.

7. I have considered the submissions advanced by both the sides. The applicant is seeking bail on the ground that he is in prolonged custody. It is pertinent to note that the application for bail bearing No.975 of 2018 was preferred by applicant on merits has been rejected by assigning reasons by order dated 4th February 2019.

During pendency of Bail Application No.975 of 2018 the applicant had preferred Criminal Application No.687 of 2018 seeking permission to attend last rites and obsequies ceremonies of his father. By order dated 15th June 2018 the Superintendent of Jail was directed to take the applicant to his residential premises on 17th, 18th and 19th June 2018 to be brought back to the jail on or before 7 pm on the same day. Subsequently Bail Application No.975 of 2018 was heard and as stated above the same was rejected by order dated 4th February 2019.

8. In Thana Singh Vs. Central Bureau of Narcotics (supra), the Hon'ble Supreme Court issued directions and guidelines to be followed during trial under NDPS Act in relation to adjournments, examination of witnesses, workload in Courts, qualitative and quantitative overhaul of the narcotics laboratories, addressing of shortage of staff in the narcotics laboratories and steps to be taken by the departments concerned to improve the quality and expertise of the technical staff, equipment and testing laboratories, define the re-testing rights of samples, and the time frame within which any application for re-testing may be permitted, monitoring agency for progress of the investigation and trial, appointment of qualitative Special Public Prosecutors, and simplification of detailed process under Section 207 of Code of Criminal Procedure.

In Hussain and another Vs. Union of India (supra), the Hon'ble Supreme Court has observed that deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of Constitution. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal

cannot be unduly long. While a person in custody for a grave offence may not be released if trial is delayed, trial has to be expedited or bail has to be granted in such cases. It was further observed that timely delivery of justice is a part of human rights. Directions were issued for early disposal of case.

In Radhyeshyam Vs. Union of India (supra), having considered the material and due regard to Section 37 of NDPS Act, the Hon'ble Supreme Court was of the view that the accused should be released on bail.

In Akhtari Bi (Smt) Vs. State of Madhya Pradesh (supra), the Hon'ble Supreme Court was considering a case of convict who had preferred an appeal against conviction, which was pending for hearing and bail was rejected by the Court. In this context it was observed that to have speedy justice is fundamental right which flows from Article 21 of Constitution. Prolonged delay in disposal of trials and thereafter appeals in criminal cases, for no fault of the accused, confers a right upon the accused to apply for bail.

9. In the decision delivered by Hon'ble Supreme Court in case of Shaheen Welfare Association Vs. Union of India and others (supra), it was observed that deprivation of personal liberty without prospect of trial being concluded within a reasonable time justifies invocation of Article 21 of Constitution. The Court categorized TADA under-trials into four classes and terms and conditions for grant of bail to them were laid down.

In Vivek Kumar Vs. State of Uttar Pradesh (supra), the Hon'ble Supreme Court granted bail to the accused who was prosecuted for

offence under Sections 307 and 395 of IPC on the ground that it is quite a long period that he has been in custody without commencing the trial and there is no need to detain him further in custody.

In the case of Deepak Shubhachandra Mehta Vs. CBI and another (supra), the Hon'ble Supreme Court observed that the accused therein was suffering from several ailments. Although prosecution assured that trial would be expeditiously concluded, the same could not proceed. Considering health condition supported by documents, the accused was entitled for bail.

In Pankaj Kumar Vs. State of Maharashtra (supra), the Hon'ble Supreme Court observed that in every case where right to speedy trial is alleged to have been infringed, the Court has to perform balancing act upon taking into consideration all attendant circumstances and determine in each case where the right to speedy trial is denied in a given case. It is well settled that a right to speedy trial in all criminal prosecutions is an inalienable right under Article 21 of the Constitution. The Supreme Court quashed the proceedings arising out of the FIR on the ground that investigation proceeded for a period of over four years in that case and there was inordinate delay of over eight years.

10. Mr.Jha relied upon decision of Delhi High Court delivered in the case of Manoj Kumar Vs. Director of Revenue Intelligence (supra). In that case bail was granted to the accused who was in custody for a period of about 22 months and was an employee of the co-accused who was the person behind the alleged trade. It was also observed that the accused was not responsible for delay in trial and Section 37 of NDPS Act is not attracted in the said Case.

Reliance is also placed by Mr.Jha on the decision of Punjab and Haryana High Court in case of Mukesh Kumar Vs. State of Punjab (supra), in which bail was granted for offences under NDPS Act on the ground of delay in trial. The other orders relied upon by Mr.Jha also relates to bail granted by the High Courts on the ground that there was delay in trial.

11. The factual matrix of the present case would indicate that the offence is of serious nature. It is true that the applicant is in custody from 25th May 2016. The previous bail application was rejected by me on merits by order dated 4th February 2019. The applicant had preferred two applications before the Special Court which were rejected by order dated 30th March 2017 and 8th November 2017. Considering the fact that the applicant is in custody since the date of arrest, as stated above, a report was called from the Trial Court with regards to the status of trial as it was agitated that there is no progress in the trial. The report dated 23rd September 2019 forwarded by the District Judge-3 and Additional Sessions Judge, Thane mentions that the charge sheet in the present case has been filed against six accused including applicant. After filing of charge sheet the co-accused Mobin Shaikh, Kalika Prasad and the applicant preferred their respective bail applications and after affording fullest opportunity two applications preferred by the applicant and the application of each of the co-accused were rejected. The report further mentions that during pendency of their applications, the Court had insisted for framing of charge. The accused and their advocates have refused to co-operate with the Court to frame the charge on the ground that the accused wanted to test the order before High Court. The other accused Vivekanand Kubal preferred

application for bail on 8th September 2017 which was withdrawn on 8th November 2017 and subsequently the said accused preferred another application on 8th January 2018. The prosecution was directed to file reply on the application which was filed on 31st January 2018. Hence, the application was fixed for arguments. Subsequently the Special Public Prosecutor informed that he is unable to represent the State as he has not been notified as special public prosecutor by appropriate notification. The advocate for the accused then preferred application for directing the State for appointment of special public prosecutor and the Court directed the respondents to take necessary steps to procure presence of special public prosecutor. The Court was informed that request has been made by letter dated 29th June 2019 for appointment of Special Public Prosecutor. However, till date, the Special Public Prosecutor was not appointed. The report further indicate that the Court would proceed with hearing of bail application of co-accused which is now pending for want of special public prosecutor and after deciding the application the case would be taken up for framing of charge. Learned APP, on instructions, submitted that the Special Public Prosecutor will be appointed shortly.

12. In the above referred case of Deepak Shubhachchandra Mehta Vs. CBI and another (supra), the Hon'ble Supreme Court has also observed that the Court granting bail should exercise its discretion in judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly where accused is charged with serious offence. From the report

forwarded by the Trial Court it is apparent that the Trial Court would proceed with the matter as soon as the special public prosecutor is appointed for conducting the trial. It is also apparent that there are six accused in this case and they had preferred bail applications before the Trial Court. The report also indicates that when the Trial Court was to proceed with framing of charge, the accused and their advocates pleaded that they would test the order rejecting bail before the High Court.

13. As stated above, the applicant is involved in offence under NDPS Act. The factual matrix of the case indicates that offence is of serious nature. About 550 kg 148 grams Methaqualone powder valued Rs.27,50,74,000/- was recovered. The decisions relied upon by the applicant's counsel were delivered in facts of those cases. I am conscious of the fact that applicant is in custody since the date of arrest. While rejecting the previous application of the applicant, this Court has considered the role played by the applicant in the said offence. Considering the fact that the applicant is in custody, directions can be issued to the Trial Court to expeditiously conclude the trial. Considering the aforesaid circumstances no case for grant of bail is made out. Hence, the application deserves to be rejected.

14. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.1694 of 2019 is rejected;
- (ii) The trial is expedited. The Trial Court shall conclude the trial within a period of nine months from the date of receipt of copy of this order;
- (iii) The Respondent-State shall take immediate steps to appoint Special Public Prosecutor for conducting trial;

- (iv) The Prosecution and the Defence shall co-operate with the Trial Court in concluding the trial expeditiously;
- (v) The accused be produced before the Court regularly;
- (vi) The Bail Application is disposed of.

(PRAKASH D. NAIK, J.)

MST