

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.36 OF 2021

Yogesh Babasaheb Sanap = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT/S

Mr.GR Syed, Advocate for Applicant/s;

Mr.SB Narwade, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 16th March, 2021.

PER COURT :-

1. Present applicant is accused No.2, who has been arrested on 14.10.2016 in connection with CR No.137/2016 for the offences punishable under Sections 420, 120(B), 201, 409, 465, 467, 468, 471, 472, 477(A) read with 34 of IPC. The present application is his 4th application before this Court after charge sheet. He has withdrawn his earlier Bail Applications, bearing Criminal Application Nos.3464/2016; 3247/2017 and 545/2019 by orders dated 27.7.2016; 21.9.2017 and 26.8.2019 respectively.

2. Heard learned Advocate and learned APP appearing for respective parties.

3. It has been vehemently submitted on behalf of the applicant that this Court, while

disposing of the earlier Bail Application No. 545/2019 on 16.8.2018, had expedited the trial and directed that it should be concluded within three months. However, it has not been concluded. He is in jail since last about 4 ½ years. In fact, when the rule is that bail should be granted and jail should be an exception; yet the applicant is not released. There is absolutely no incriminating material against the applicant. The informant, who is the District Administrator, had made a complaint about misappropriation of funds in Vasantrao Naik Vimukta Jatis and Nomadic Tribes Development Corporation, by preparing false and bogus loan proposals, wherein it is stated that the present applicant was serving as a Manager with District Central Co-operative bank, Beed. Now the entire investigation is over and charge sheet is already filed; yet when the trial is not progressing further, vital rights of the applicant are affected. He relied on the decision of this Court in Bail Application No.914/2020 with companion matters (Divya w/o Deepak Parkhe Vs. The State of Maharashtra, dated 16th February, 2021, wherein in respect of similar offence, this Court has granted bail. Further in the case of Dipak Subhashchandra Mehta Vs. C.B.I. and Anr. - 2012 AIR (SC) 949, the Hon'ble Supreme Court, when it was found that the accused was charged with economic offence of serious nature involving crores of rupees; was in custody for ten months and the trial was not likely to conclude in the near future, bail was granted to the applicant therein.

4. Per contra, learned APP strongly opposed the application and submitted that the present application itself is not maintainable in view of the earlier orders passed by this Court. In fact, the Bail Application No.3247/2017 filed by the applicant for regular bail was rejected by a detailed order by this Court on 21.9.2017. Further, the trial has progressed. However, due to pandemic situation, when the work of recording of evidence is hampered, the applicant cannot take disadvantage of that situation.

5. At the outset, it can be seen that when this Court, by a detailed order, referred to above, had rejected the earlier Bail Application on 21.9.2017, the present Bail Application is not maintainable. Further, thereafter also, there was an attempt on the part of this applicant before this Court for regular bail; but, it was disposed of by issuing directions to the learned Trial Judge on 26.8.2019, thereby expediting the trial with directions to conclude it within a period of three months. The applicant is not denying a fact that the trial has begun and some witnesses have been examined. Under such circumstance, a progress report was called from the concerned Trial Judge. It is important to note that in spite of a specific order passed by this Court on 26.8.2019 that the trial should be concluded within three months, it appears that the learned Principal District & Sessions Judge, by order dated 2.12.2019, had

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transferred the case, i.e. RCC No.57/2017, to the Court of 16th Jt. Civil Judge, SD and Additional CJM, Ahmednagar. It has been stated by the learned Additional CJM that there was effective hearing in the matter between 2.12.2019 and 16.3.2020. However, thereafter, due to COVID-19 pandemic situation and the SOP issued by this Court, progress could not be made. However, after resumption of Court work partially, summons has been issued to one witness viz. Gupta and he was also present on 19.9.2020. However, the learned Advocates for accused were absent, who were supposed to co-operate in conducting the trial of the case. It has been specifically stated in the report by the concerned Judge that only few witnesses are remained to be examined. But, due to the absentee of the learned Advocates for the accused on the ground of COVID-19, the trial could not be conducted further. If the approach of the learned Advocates, representing the present accused or co-accused, is like this, then the accused cannot seek advantage of the said fact. A party, who is not co-operating with conduct of the trial cannot be protected with bail order. The decisions in the Bail Applications/matters, relied upon by the learned Advocate for the applicant, are not applicable to the present case due to this peculiar circumstance.

6. The allegation against the present applicant and other accused is that they had prepared the bogus documents and taken financial

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assistance/loans from the Government institution and the misappropriation is to tune of Rs.2 crores and 50 lakhs. As regards the present applicant is concerned, it is stated that he has encashed certain cheques in his account. Under such circumstance, no case is made out to release the applicant on bail. The Bail Application stands rejected. It would be rather for the applicant to co-operate with the Trial Court in expeditious disposal of the case.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV