

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

BAIL APPLICATION NO. 497 OF 2021

Samir S/o Noormiya Killarikar

Applicant

Versus

The State of Maharashtra & others

Respondents

Mr. R.S. Deshmukh, Senior Counsel with Mr. S.V. Deshmukh and Govind Kulkarni, instructed by Mr. D.R. Deshmukh, Advocate for the applicant.

Mr. K.M. Kagne, APP for respondent No. 1/State.

Mr. A.G. Talhar, ASG for respondents No. 2 and 3.

**CORAM : M.G. Sewlikar, J.**

**RESERVED ON : 21<sup>st</sup> October, 2021.**

**PRONOUNCED ON : 6<sup>th</sup> December, 2021.**

**PER COURT :**

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No. 80/2014 registered with MIDC Latur Police Station, Dist. Latur, for the offences punishable under Sections 302, 364, 354, 376, 201, 120(b) read with Section 34 of the Indian Penal Code.

2. Facts leading to this application are that deceased Kalpana was the sister of informant Ganesh Giri. She was a political worker of Youth Congress Party, Latur Branch. Informant filed complaint about missing of Kalpana with MIDC Police Station, Latur. Dead body of deceased Kalpana was found at Tuljapur reservoir on 23<sup>rd</sup> March, 2014. Initially, A.D. No. 18/2014 was registered with Tuljapur Police Station, Tuljapur. Later on, i.e. on 27<sup>th</sup> March, 2014, First Information Report came to be registered on the basis of complaint filed by the father of the deceased by the name of Mangal Giri on the basis of which Crime No. 80/2014 came to be registered against unknown persons under Sections 302, 364, 354, 376, 201, 120(b) read with Section 34 of the Indian Penal Code.

3. Applicant was arrested on 29<sup>th</sup> March, 2014. First Charge-sheet came to be filed on 26<sup>th</sup> June, 2014, second supplementary Charge-sheet came to be filed on 12<sup>th</sup> December, 2014 and, third charge-sheet was filed on 10<sup>th</sup> June, 2015. On 8<sup>th</sup> August, 2016, investigation was transferred to the Central Bureau of Investigation, New Delhi.

4. Heard learned Senior Counsel Shri R.S. Deshmukh, for the applicant and Shri Talhar, learned Assistant Solicitor General for Central Bureau of Investigation/respondent No. 3.

5. Learned Senior Counsel Shri Deshmukh submits that all the applicants have been released on bail. He submits that this Court (Coram : P.R. Bora, J.) by order dated 5<sup>th</sup> December, 2018, in Bail Application No. 1048/2018, has released co-accused Mahendrasingh s/o Vikramsingh Chauhan. He submits that applicant has been in custody since 29<sup>th</sup> March, 2014. The Honourable Supreme Court directed the trial to be completed within a period of one year. This Court (Coram : V.K. Jadhav, J.) vide order dated 6<sup>th</sup> October, 2020, directed the Trial Court to dispose of the case, as expeditiously as possible, within a reasonable time and on top priority basis by giving day-to-day hearing, if possible, after normal Court functioning begins. He submits that the trial is proceeding at snail pace. Prosecution is not at all serious in conducting the trial. He has produced roznama to show that the prosecution is not at all serious in conducting the trial. He submits that fundamental right of the accused of speedy trial is violated. He submits that on 17<sup>th</sup> June, 2021, Special APP was

absent. On the next date, Special APP filed application for issue of summons. On the adjourned date, the Special APP was absent. He submits that on 29<sup>th</sup> July, 2021, application on behalf of United Human Rights Foundation Society was filed to bring certain facts on record and it was also requested that this application should be considered as *amicus curiae*. The learned Trial Court entertained this application and called the say of APP and accused. He submits that every endeavour is made to see that the trial does not proceed. On 1<sup>st</sup> September, 2021, again application for issuance of witness summons was filed. On the adjourned date i.e. on 14<sup>th</sup> September, 2021, witness summons was not received. He submits that on one date, witness was present but APP was absent and evidence of witness could not be recorded. He submits that this shows that the Central Bureau of Investigation is not at all serious in conducting the matter. Most of the times witness summons has returned unserved. In such circumstances, applicant cannot be detailed behind the bars for an indefinite period. Therefore, application needs to be allowed. Learned Senior Counsel further submits that till date 41 witnesses have been examined out of total 161 witnesses. He submits that in such circumstances, application needs to be allowed.

6. Learned ASG Shri Talhar submits that applicant has been filing application after application for releasing him on bail. He submits that applicant had filed applications for regular bail on 12<sup>th</sup> February, 2015 and 1<sup>st</sup> January, 2016 which were rejected by the Sessions/Trial Court, Latur by order dated 24<sup>th</sup> June, 2015 and 18<sup>th</sup> March, 2016 respectively. The applicant then preferred Criminal Application No. 2005/2016 for regular bail and the same came to be rejected by this Court (Coram : N.W. Sambre, J.) vide order dated 24<sup>th</sup> June, 2016. The Special Leave to Appeal (Cri.) No. 6570/2016 preferred by the applicant before the Hon'ble Supreme Court against the said order dated 24<sup>th</sup> June, 2016 came to be dismissed on 9<sup>th</sup> September, 2016. The applicant again filed Criminal Application No. 5256/2017 for regular bail which came to be dismissed as withdrawn by order dated 27<sup>th</sup> November, 2017 passed by this Court (Coram: N.W. Sambre, J.), against which, the applicant preferred Special Leave Petition vide Diary No. 41048/2017 which also came to be dismissed as withdrawn by the Hon'ble Supreme Court vide order dated 12<sup>th</sup> January, 2018. His further applications before the Sessions/Trial Court for obtaining regular bail came to be rejected vide orders dated 4<sup>th</sup> April, 2018 and 24<sup>th</sup> December, 2018 respectively. The applicant has now filed this Bail Application for

regular bail. He has also filed application bearing Bail Application No. 772/2020 for releasing him on bail on 6<sup>th</sup> October, 2020, which was also rejected by this Court. While passing order, this Court directed to dispose of the case as expeditiously as possible within a reasonable time and on top priority basis by giving day to day hearing if possible after normal Court functioning begins. He submits that applicant is also responsible for delay in conclusion of trial. He submits that 39 witnesses have been examined and prosecution has curtailed the number of witnesses and now, prosecution will examine only 32 witnesses. He submits that trial got delayed because of the circumstances beyond the control of Central Bureau of Investigation as from March 2020, lock down was imposed and the Court was not functioning since 28<sup>th</sup> June, 2021 to 1<sup>st</sup> August, 2021. He submits that applicant is a person who had tried to influence the Chemical Analyser for getting favourable report. If such a person is released on bail, there is every possibility of the applicant pressurising the witnesses. He assures that every endeavour will be made to dispose of the case on top priority basis. He places reliance on following cases :-

reported in 2013 Legal Eagle (SC) 137;

- 02 Mahesh Baburao Patil vs. State of Maharashtra & another;  
Bail Application No. 329 of 2020;
- 03 Dipak Subhashchandra Mehta vs. Central Bureau of Investigation – Banking and Security Fraud & another  
reported in 2010 Legal Eagle (GUJ) 2830;
- 04 Dipak Subhashchandra Mehta vs. Central Bureau of Investigation – Banking and Security Fraud & another  
reported in 2011 Legal Eagle (GUJ) 2151;
- 05 Sudha Singh vs. State of Uttar Pradesh & another  
2021 DGLS (SC) 249;
- 06 Samir s/o Noorminya Killarikar vs. State of Maharashtra  
Criminal Application No.2005 of 2016;
- 07 Samir s/o Noorminya Killarikar vs. The Central Bureau of Investigation (CBI)  
Bail Application No. 04 of 2019;

7. While rejecting application, this Court, by order dated 4<sup>th</sup> June, 2019, has observed as under :-

“14. The Supreme Court, in the case of Abdul Rehman Antulay and Ors. vs. R.S. Nayak (supra) relied upon by the learned ASG, in para no. 54, has made the following observations :

54. In view of the above discussion, the following propositions emerge, meant to serve as guidelines.

We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are :

1. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

2. Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view.

3. The concerns underlying the Right to speedy trial from the point of view of the accused are :

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to

unnecessary or unduly long incarceration prior to his conviction.

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

4. At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the Right to speedy trial is alleged to have been infringed, the first question to be put and answered is who is responsible for the delay ? Proceedings taken by

either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not a frivolous. Very often these stays obtained on ex-parte representation.

5. While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions and so on-what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

6. Each and every delay does not necessarily prejudice the accused. Some delays may indeed

work to his advantage. As has been observed by Powell, J. in *Barker* “it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate”. The same ideal has been stated by White, J. in *U.S. v. Ewell*, 15 Law Edn. 2<sup>Nd</sup> 627, in the following words :

the sixth amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than more speed, as its essential ingredients, and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

7. We cannot recognize or give effect to, what is called the ‘demand’ rule. An accused cannot try himself; he is tried by the court at the behest of the prosecution. Hence, an accused’s plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy

trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in U.S.A., the relevance of demand rule has been substantially watered down in Barker and other succeeding cases.

8. Ultimately, the court has to balance and weigh the several relevant factors-'balancing test' or 'balancing process' and determine in each case whether the right to speedy trial has been denied in a given case.

9. Ordinarily speaking, where the court comes to the conclusion that Right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and the other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order-including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded-as may be deemed just and equitable in the circumstances of the case.

10. It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of Right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of U.S.A. too as repeatedly refused to fix any such outer time limit inspite of the Sixth Amendment. Nor do we think that not fixing any such outer limit in effectuates the guarantee of Right to speedy trial.

11. An objection based on denial of Right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.”

8. In the case at hand, it is not in dispute that since March 2020, pandemic owing to Covid 19 started due to which, lock down was imposed. Because of lock down, trials could not be conducted. In these circumstances, there was delay in concluding the trial. Therefore, delay cannot be wholly attributed to the Central Bureau of Investigation.

9. Moreover, while rejecting Bail Application No. 2005/2016, this Court has made following observations :-

“12. Apart from above, it is required to be noted that the applicant is also trying to influence the witnesses as is apparent from the report submitted by forensic science laboratory in relation to auditory analysis of recorded voice of present applicant. The said report speaks voluminous about conduct and involvement of present applicant in the crime in question.”

10. These observations clearly show that the applicant had tried to influence the Chemical Analyser's office. If such a person is released on bail, there is every possibility of his influencing and pressurising the witnesses. In this view of the matter, I am not inclined to release the applicant on bail. Learned Trial Court is directed to dispose of the trial within a period of six months from

today by giving top priority. Respondent No. 3-Central Bureau of Investigation to co-operate and finish the trial within the extended period.

11. Application stands rejected accordingly.

**( M. G. SEWLIKAR )**  
**Judge**

dyb