

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.977 OF 2020

Arif Gulam Dastgir Shaikh

..Applicant

Versus

The State of Maharashtra

..Respondent

Ms. Sudha Dwivedi, for the Applicant.

Mrs. Aruna Pai, Special PP a/w Ms. A. A. Takalkar, APP for the Respondent – State.

Mr. Himanshu Kode a/w Ms. Janhavi Karnik i/by Mr. Ameya Lambhate, for the Intervenor.

CORAM : NITIN W. SAMBRE, J.

DATE : 9th DECEMBER, 2021

PC.

1. Heard.

2. Applicant's earlier bail application was rejected by this Court vide detailed order passed on 19th August, 2019. This Court while rejecting prayer has given cogent reasons by appreciating nature of evidence available against the applicant so as to infer his *prima-facie* involvement in serious offence which is punishable with life or death.

3. Counsel for the applicant has tried to rely on order of this Court passed in Criminal Bail Application No.2865 of 2021

passed on 25th October, 2021 in the matter of **Mr. Mahesh Chelaram Bijlani Vs. The State of Maharashtra** so as to claim parity. Apart from above, she has also pressed the ground of delay and applicant claims to have suffered incarceration for more than seven years i.e. from 29th October, 2013. It is claimed by counsel for the applicant that out of 199 witnesses only 66 are examined and as such trial is not likely to be concluded in recent future.

4. Learned Special PP assisted by counsel for the complainant would oppose the prayer.

5. My attention is invited to the order of this Court as referred above and also the fact that after the trial was expedited 66 witnesses are already examined and 25 are yet to be examined.

6. Considered submissions.

7. This Court while dealing with the earlier bail application has already considered nature of the evidence available on record and concluded that there is strong *prima-facie* case against the applicant.

8. As far as the claim of parity with co-accused Mr. Mahesh Chelaram Bijlani is concerned, I have gone through the order of this Court passed on 25th October, 2021, so also the discretion of this Court in order passed in Bail Application No.2747 of 2018 as

referred above delivered on 19th August, 2019, the Sessions Court and this Court have in detail dealt with the nature of evidence available against the applicant and there are no change in circumstances which warrant this Court to re-appreciate the same. The important fact is such witnesses who have made statement about applicant's involvement are yet to be examined.

9. Apart from above, the fact remains that since the number of witnesses to be examined are much more due to non-functional during pandemic i.e. more than one and half years trial has been delayed, however, such period cannot be attributed to the prosecution.

10. Learned Special PP has assured that the every endeavour will be made by rendering assistance from the prosecution to conclude trial expeditiously as has been ordered by the Division Bench of this Court.

11. In the aforesaid background, claim on the ground of delay or on the ground of parity applicant is entitled to be released on bail, cannot be accepted.

12. Application as such stands rejected.

[NITIN W. SAMBRE, J.]