

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [BA] NO. 399 OF 2020.

Sameer Sudhir Joshi.

-VERSUS-

The State of Maharashtra, through P.S. Ranapratap Nagar, Nagpur.

CRIMINAL APPLICATION [BA] NO. 1334 OF 2020.

Sameer Sudhir Joshi.

-VERSUS-

The State of Maharashtra, through P.S. Khadan, Akola.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

S/Shri A.M. Ghare and S.V. Sirpurkar, Advocates for the
Applicant.

Shri S.A. Ashirgade, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : SEPTEMBER 24, 2021.

Heard.

2. Both applications are filed by one and same applicant/accused namely Sameer Sudhir Joshi, seeking regular bail on the same ground of delay in holding trial. Hence, for the sake of convenience, they are heard and taken up together for disposal.

3. Criminal Application No. 399/2020, arise out of Crime No.348/2013 registered with Ranapratap Nagar Police Station, Nagpur for the offence punishable

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under Sections 406, 409, 420, 421, 120-B read with Section 34 of the Indian Penal Code, under Section 3 of the Maharashtra Protection of Interest of Depositors Act (MPID) and Section 45-iA, 45-S punishable under Section 58-B of the Reserve Bank of India Act, 1934, which is later on numbered as MPID Case No. 3/2013, pending on the file of Special Judge, Nagpur.

Criminal Application No.1334/2020 arise out of Crime No.219/2013 registered with Khadan Police Station, Akola for the offence punishable under Sections 406, 409, 420, 465, 467, 468, 471, 472, 201 120-B read with Section 34 of the Indian Penal Code and under Section 3 of the Maharashtra Protection of Interest of Depositors Act (MPID), which is later on numbered as MPID Case No. 73/2014, pending on the file of Special Judge, Akola.

4. The applicant is seeking bail purely on the ground of delay in holding trial, as there is no likelihood of concluding the said trial in near future. It is submitted that the applicant came to be arrested on 13.10.2013, and for near about last 8 years, he suffered pre-trial detention. It is not in dispute that for near

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about last 8 years, the applicant/accused is languishing in jail. In Crime No.399/2020, the applicant had twice approached this Court for bail, however, both applications were rejected vide order dated 26.04.2017 and 20.02.2018. While rejecting the second bail application, this Court has expedited the trial with a direction to decide the same within a period of one year i.e. upto 19.02.2019, as per the report of the trial Court dated 04.09.2021. The said period was extended from time to time, and now the last extension would expire on 23.08.2022. The report further indicates that so far the prosecution has examined 56 witnesses, and 48 witnesses are still remained to be examined. It is also informed that the charge sheet consists of 70000 to 80000 pages. The learned A.P.P. upon instructions, filed a Pursis dated 14.09.2021, informing that the prosecution is now intending to examine 19 witnesses only.

5. In Crime No.219/2013, the applicant has earlier applied for pre-arrest bail to this Court which was rejected vide order dated 22.12.2014. In said case, this Court has not expedited the trial. The report of

Special Judge dated 03.09.2021 indicates that till date not a single witness has been examined in the case. The learned A.P.P. has filed a Pursis dated 18.09.2021, informing that the prosecution is prosecution is intending to examine 90 witnesses in said case.

6. As regards the MPID Case No.3/2013 (Criminal Application No.399/2020), is concerned, till date 56 witnesses have been examined as yet, and some more witnesses remained to be examined. Record demonstrate that this Court has for the first time directed to complete the trial within one year 20.02.2018, and the said time was extended from time to time and now it is extended upto 23.08.2022. It conveys that though the matter is time bound, the trial Court is not able to conclude it within the stipulated period, and going on seeking extension on extensions for one or the other reason. It is canvassed that taking into account the history of the proceedings, absolutely there is no likelihood of concluding the trial in near future. In view of that, there is no manner of doubt that it will take few more years to conclude the trial.

7. Learned A.P.P. while resisting bail

applications would submit that the trial in Special Case No.3/2013 is at the verge of completion, since only 19 witnesses remained to be examined. It is required to be noted that the report of Special Judge indicates that as per list of witnesses, 48 witnesses have remained to be examined. Though the prosecution has filed a Pursis that they would examine only 19 witnesses, however, the possibility of examining more witnesses cannot be ruled out in view of vast magnitude of the case. Pertinent to note that the charge sheet is running into 70000 to 80000 pages, meaning thereby every document is required to be referred to the witness, which would consume time. Besides that in said case there are 26 accused, out of which 25 were already enlarged on bail. Each witness is to be cross-examined by different Advocates engaged by various accused. It is apparent that even after completion of recording of evidence, still the trial would take few months to prepare and record statements of accused under Section 313 of the Code of Criminal Procedure, to hear final arguments and to deliver judgment. Having regard to all these facts, it cannot be said that the trial

Court would be in a position to conclude the case in few months.

8. It is argued that besides Section 409 of the Indian Penal Code, the applicant has undergone maximum sentence prescribed for rest of the offences. It is urged that even if the offence punishable under Section 409 has been proved, still there is no minimum rider of imposing punishment for said offence. While pressing bail on the point of delay, the learned Counsel appearing for the applicant has relied on certain judgments wherein the Supreme Court has ruled that delay in holding trial touches to the life and personal liberty of the accused, which is violation of Article 21 of the Constitution of India.

9. The applicant has already undergone pre-trial detention for near about 8 years. Moreover, one cannot vouch as to when the trial of part heard MPID case No.3/2013 would be concluded. Moreover, another Special Case No.73/2013, pending at Akola Court has not even commenced.

10. While claiming bail, learned Counsel for the applicant has relied on the decision in Special Leave

to Appeal (Cri) No. 4057/2021 dated 23.09.2021 (Vinay Jaidev Wasankar .vrs. State of Maharashtra). It is argued that in the said similar case, the Supreme Court after considering long incarceration of the accused has released him on bail. In order to bring factual aspect of the said case on record, my attention is invited to the facts as contained in Criminal Bail Application No.939/2019 filed before this Court (Nagpur Bench), against which the said Special Leave to Appeal was filed. In said case on similar facts, the Supreme Court by considering that the accused therein charged for similar offences was in custody for past 7 years, has released him on bail. The case at hand stands on some what similar footing. In said case, on similar premise the Supreme Court due to long incarceration took a view that it is a fit case to grant bail. In case at hand, the applicant equally was charged for similar offences under I.P.C and M.P.I.D. having somewhat similar volume of defalcated amount.

11. On the point of delay in trial, it is straneously argued that since the accused is languishing in jail for 8 years, the Court shall take note of the said

fact especially with reference that yet one of the trial has even not commenced. The Supreme Court in catena of decisions has recognized the right of accused for fair and speedy trial, as a valuable right under Article 21 of the Constitution of India. In this regard, profitable reference can be made to the observations of this Court in case of **National Investigation Agency .vrs. Areeb Ejaz Majeed (2021 SCC Online Bom 239)**, of which paragraph no.29 reads as under :

“29. But, the case of the respondent on the second aspect of the matter appears to be on firm footing. There is no dispute about the fact that right to fair and speedy trial is a right recognized under Article 21 of the Constitution of India. The Hon’ble Supreme Court and various High Courts, including this court, have consistently held that the undertrials cannot be allowed to languish for years together in jail, while the trials proceed at snail’s pace. If ultimately, the accused are found to be not guilty, the number of years, months and days spent by such accused as undertrials in jail, can never be given back to them and this is certainly a violation of their valuable right under Article 21 of the Constitution of India. Therefore, right to speedy trial has been recognized and reaffirmed consistently by the judgments of the superior courts.”

12. On the touchstone of above legal principles, it is to be remembered that already accused is in jail for 8 years. There is no hope of completing the trial in

near future, apart from the fact that one of the case has even not commenced. In the circumstances, further detention of applicant/accused is wholly unjustifiable. In the circumstances, this is a case for grant of bail, hence, the following order.

- (i) Criminal Applications are allowed and disposed of.
- (ii) The applicant/accused Sameer Sudhir Joshi is released on bail in connection with Crime No.348/2013 registered with Ranapratap Nagar Police Station, Nagpur for the offence punishable under Sections 406, 409, 420, 421, 120-B read with Section 34 of the Indian Penal Code, under Section 3 of the Maharashtra Protection of Interest of Depositors Act (MPID) and Section 45-iA, 45-S punishable under Section 58-B of the Reserve Bank of India Act, 1934, (MPID Case No. 3/2013, pending on the file of Special Judge, Nagpur), as well as in connection with Crime No.219/2013 registered with Khadan Police Station, Akola for the offence punishable under Sections 406, 409, 420, 465, 467, 468, 471, 472, 201 120-B read with Section 34 of the Indian Penal Code and under Section 3 of the Maharashtra Protection of Interest of Depositors Act, (MPID Case No. 73/2014, pending on the file of Special Judge, Akola), on his furnishing P.R. Bond of Rs. 1,00,000/- in each crime, with one

surety in the like amount.

- (iii) The applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.
- (iv) The applicant/accused shall not abscond and provide his residential address and cell number to concerned Investigating Officer and shall not change his place of residence without prior intimation to the concerned Investigating Officer.
- (v) The applicant/accused shall surrender his passport to the investigating officer within one week of his release, and shall not leave the Country without prior permission of the trial Court.
- (vi) The applicant/accused shall attend each and every date of hearing of the proceedings before the concerned Court.
- (vii) Breach of any of the above condition, would give liberty to the prosecution to move the Court for cancellation of bail.

JUDGE

Rgd.