

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 1137/2021
(Vinay S/o Jaidev Wasankar Vs. State of Maharashtra)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri D. V. Chauhan, Advocate for applicant.
Shri I. J. Damle, APP for non-applicant/State.

CORAM : VINAY JOSHI, J.
DATED : 14.12.2021.

Heard.

2. This is an application in terms of Section 439 of the Code of Criminal Procedure (Code) for grant of regular bail in Crime No. 373/2015. Initially, crime was registered at Ambazari Police Station which was latter investigated by the Economic Offence Wing, Nagpur for offence punishable under Sections 420, 406, 409, 506 read with Section 120-B of the Indian Penal Code and Section 3 of the Maharashtra Protection of Investors and Depositors Act.

3. This time, the applicant is seeking bail on the ground of delay in holding trial and particularly relying on the decision of the Supreme Court dated 23.09.2021 passed in Petition(S) for Special Leave to Appeal (Crl) No(s). 4057/2021 by which the very applicant was released by the Supreme Court in similar offence on account of delay in trial.

4. The applicant has introduced various scheme and on promise of high returns, allegedly duped several innocent investors. It is the prosecution case that near about 4000 investors were duped for total amount of 230 crores. Initially, Crime No. 156/2014 was registered against the applicant and others under the same allegations. In the said crime, the applicant was arrested on 09.05.2014 and till date, he is in Jail. During the course of investigation of earlier crime, another crime having similar allegation was came to be registered vide Crime No. 373/2015, in which the applicant is claiming bail.

5. In earlier crime, the applicant has repeatedly applied to the Special Court as well as this Court for grant of bail, but remained unsuccessful. The Special Case No. 4/2014 registered at the instance of earlier crime No. 156/2014 was made time bound and the time was extended on various occasions. Finally, in earlier crime, bail was claimed on account of delay in holding trial vide Criminal Application (BA) No. 939/2019, however this Court has refused to grant bail vide order dated 03.05.2021. The prime contention was that the applicant was in Jail in earlier crime for the period of more than seven years and therefore, on sole ground of delay, bail was claimed. Since this Court has refused to grant bail, the applicant has approached to the Supreme Court which in turn, has released him on bail vide order dated 23.09.2021 by taking into account that the applicant was in custody for past seven years.

6. In such background, the same applicant is seeking bail in second crime registered vide Crime No. 373/2015 which was latter on numbered as Special Case No. 4/2017. The applicant's learned counsel would submit that the applicant is continuously in Jail from 09.05.2014 i.e. from the date of arrest in earlier crime. It is contended that both offences are arising out of same transaction for similar charges. Not only that the Trial Court has clubbed both Trials and jointly framed charge. It is submitted that the evidence in both cases was commonly recorded.

7. It is submitted that though in existing crime No. 373/2015, the applicant was shown to be arrested on 09.05.2017, however, he is in Jail from 09.05.2014, meaning thereby, for the period of more than seven years, he is in Jail. According to the applicant, the Investigating Officer as well as the Trial Court is the same. The Economic Offence Wing was well aware that in earlier crime of similar nature, applicant is in Jail. The Investigating Agency is same, hence applicant's custody ought to have sought earlier in second crime, hence the applicant was in deemed custody in second crime from 09.05.2014. Merely because the applicant's custody in second crime No. 373/2015 was belatedly sought on 09.05.2017, the prosecution cannot take any advantage. It is submitted that from last seven and half years, the applicant is in Jail. In earlier crime for the same reason, the Supreme Court has released him on bail, hence he is also entitled for bail in this crime.

8. The State resisted bail by filing reply affidavit. The State contended about the gravity of offence and its vast magnitude. It is contended that the applicant repeatedly approached this Court for grant of bail, however it was rejected. Mere delay in holding trial, cannot be a ground for bail in such serious crime. Moreover, it is stated that though the Supreme Court has granted bail to the applicant in earlier Crime, however the applicant has not complied with the bail conditions as imposed by the Trial Court. Precisely, by pointing towards the seriousness of crime, bail is prayed to to be rejected.

9. Admittedly, in earlier Crime No. 156/2014, the applicant was arrested on 09.05.2014 and since then he is continuously in Jail. The State has not disputed that the Investigating Agency is the same as well as both trials are clubbed by the Special Court. It is obvious that the Investigating Agency was well aware that the applicant was arrested on 09.05.2014 and therefore, they could have sought his custody in second crime. The applicant's custody was sought and was formally arrested on 09.05.2017 in second crime. There is no purpose in saying that the period of detention has to be counted from 09.05.2017. Learned counsel for the applicant has relied on the decision of the Supreme Court in case of **Government of Andhra Pradesh & another Vs. Anne Venkatesware & others, (1977) 3 SCC 298**, wherein under similar circumstances, the Supreme Court has considered the period of detention of earlier crime for the purpose of grant of set-off under Section 428 of the Code of Criminal Procedure.

10. No doubt, earlier bail application was rejected on merit in this crime as well as in earlier crime. The question is about applicant's entitlement for bail on account of delay in holding trial. Besides the offence punishable under Section 409 of the Indian Penal Code, the applicant has already undergone maximum period of sentence which could be attracted for rest of the offences. Under trial, prisoner has constitutional right to have speedy trial. When the accused is in Jail, it is obligatory on State to expedite the trial. It is not in dispute that yet 25 more witnesses are to be examined. There appears to be several accused represented by different Advocates. Having regard to the vast magnitude of the case, this Court has time to time extended time limit for disposal. One can easily foresee that certainly considerable time is required to conclude the evidence, recording statements of several accused, to hear arguments and to deliver judgment in both cases since they are clubbed together.

11. It is not in dispute that the nature of crime and the amount involved in both crimes is some what similar. There is no dispute that considering the similar nature of allegations, the Trial Court has already framed common charges and both trials are clubbed together. In earlier crime, the Hon'ble Supreme Court by taking into account that the applicant was in Jail for more than seven years, released him on bail. There is no reason to take different view since the accusations are same. Now period of pre-trial detention is to the extent of seven and half years. There is no justification in rejecting bail as in similar facts, the Supreme Court has released applicant on bail in earlier crime.

12. Having regard to the above facts, certainly case is made out to grant bail. Hence, following order:-

- (I) Criminal Application stands allowed and disposed of.
- (II) The applicant/accused – Vinay S/o Jaidev Wasankar is released on bail on his furnishing P.R. bond of Rs. 2,00,000/- 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 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, if not surrendered earlier. He should file affidavit to that extent in this proceeding within one week thereafter.
- (VI) The applicant/accused shall not leave the Country without prior permission of the Trial Court.

- (VII) The applicant/accused shall attend each and every date of the proceedings before the concerned Court.
- (VIII) Breach of any of the above condition, would give rise to the prosecution to move the Court for cancellation of bail.

JUDGE

Gohane

Digitally
signed by
JITENDRA
BHARAT
GOHANE
Date:
2021.12.15
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