

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

CRIMINAL APPLICATION [BA] NO. 939/2019.

Vinay Jaidev Wasankar.

-VERSUS-

State of Maharashtra.

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

Court's or Judge's Orders

Shri D.V. Chauhan, Advocate for the Applicant.

Ms. S. Jachak, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : MAY 03, 2021.

Heard learned Counsel for the parties through
video conference.

2. Can mere delay in the trial, and long period of detention be solely sufficient for enlargement on bail inspite of the charges of serious economic offences, is the question. Precisely this is the sole issue which falls for consideration and can be perceived on filtering the record.

3. The applicant/accused has been charged for the offence punishable under Sections 420, 406, 409, 506 read

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with Section 120-B of the Indian Penal Code, and Section 3 of the Maharashtra Protection of Interest of Depositors Act, 1999 [MPID]. A crime in this respect has been registered with the Economic Offence Wing (EOW), Crime Branch, Civil Lines, Nagpur vide Crime No.156/2014 on 09.05.2014. The gist of allegations against the applicant is that - the applicant is the main conspirator who has floated various schemes to lure general public and collected Crores of rupees under promise of paying excessive interest. As per the police report, near about 700-800 common citizens were trapped into the fishy schemes under which they lost their hard earned money. The entire embezzlement is to the tune of Rs.127 Crores, and still some unknown investors are approaching the investigating agency with their grievances.

4. It is alleged that the crime had affected the entire community, as also the economy. Large number of middle class people became the victim and have lost their huge money making their life miserable. Allegedly the applicant has conducted seminars, published advertisement which indicates calculated and deliberate design in executing the desired act. On said background the matter is to be viewed.

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While considering the rights of the accused, the Court must be mindful of the rights of hundreds of victims who have imposed faith on the applicant and have been virtually brought on the streets. The impact of the crime and its social repercussions also bears relevance.

5. The applicant/accused made series of attempts before the trial Court and this Court for his release, however, none of them yielded so far. It would be apposite on my part to make brief references of the attempts made by the applicant / accused before this Court only.

6. The applicant / accused came to be arrested in the year 2014. After his arrest and filing of the charge sheet, his entitlement for bail was first time tested before this Court in Misc. Criminal Application No. 763/2015, which went against him vide an elaborate order dated 22.12.2015. This was followed by a second attempt after two years vide Criminal Application (BA) No.327/2017. In the said application, after arguing the matter for some time, perhaps on perceiving non-inclination of this Court, the applicant sought permission to withdraw, which resulted into dismissal of bail application as

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withdrawn vide order dated 05.07.2017. Again after a gap of two years, the applicant/accused applied to this Court for grant of bail vide Criminal Application (BA) No.182/2019, however, was unable to achieve the result which is reflected in the order of this Court dated 23.04.2019. It is to be noted that till date the applicant/accused did not chooses to approach to the Hon'ble Supreme Court for redressal of his grievance. During the interregnum period similar number of attempts were made before the trial Court, however they met the same fate.

7. In this background this is the fourth attempt by way of the present Criminal Application filed on 04.10.2019. It is a very sorry state of affairs that the bail application remained pending for more than 1 ½ years for one or the other reason.

8. Repeated rejection of bail on merits has foreclosed the applicants right to claim bail on merits on same grounds before the same Court. This position has not been denied by Shri Chauhan, the learned Counsel appearing for the applicant. This being the position, this time the bail is

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claimed purely on the ground of long period of incarceration, and inordinate delay in holding the trial. The learned Counsel for the applicant reminded that the applicant is behind bars for a period of more than 6 years. According to him, there is no likelihood of concluding the trial in near future, and therefore, it violates the fundamental right of the applicant of speedy trial, which is part of Article 21 of the Constitution of India.

9. The learned Counsel for the applicant has ably assisted by providing a chart indicating all the factual events which gives a fair idea about the things. On the other hand Ms. Jachak, the learned A.P.P. has equally provided a chart which contains a gist and indicates the progress of the trial till date. The said material ably assists to great extent in deciding this application.

10. It is to be noted that while deciding Criminal Writ Petition No. 722/2018 (filed by one of the co-accused), this Court vide its order dated 10.09.2018, for the first time expedited the trial by requesting the learned Special Judge to dispose of the case till 30.09.2019. Record indicates that this

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Court vide its order dated 01.10.2019, has extended the time for a period of six months, which would logically end on 30.04.2020.

11. The learned A.P.P. while placing the status of the trial has briefed (paragraph no.3), that this Court vide order dated 04.03.2021 has extended the time for the period of six months, which would come to an end on 03.09.2021. These orders are relevant for deciding this application. Precisely the trial has been expedited and directions were issued to conclude the trial till 03.09.2021.

12. The learned Counsel for the applicant by and large expressed that there are several accused, some of them are still absconding, charge sheet runs into thousands of pages, hundreds of witnesses are to be examined, therefore, there is no likelihood of concluding the trial in near future. He has also canvassed that the trial Court is overburdened with some other assignments and several High Court expedited cases are pending on his file. He also attempted to demonstrate that, as and when the trial Court receives instructions /directions from this Court for expediting the trial, then for some time

the trial proceeds, but, again comes to a standstill.

13. The learned Counsel for the applicant has drawn my attention to a Pursis dated 04.01.2020 filed by the prosecution in trial Court citing total 87 witnesses, with a note that there may be 8 to 10 more witnesses. On this count he has straneously argued that the entire exercise would take few more years, and therefore, it is totally improper to detain the applicant/accused behind bars for an indefinite period.

14. The learned Counsel for the applicant by placing reliance on the decisions in case of **Supreme Court Legal Aid Committee .vrs. Union of India and others – (1994) 6 SCC 731; Saheen Welfare Association .vrs. Union of India and others – (1996) 2 SCC 616; Vinod Bhandari .vrs. State of Madhya Pradesh – (2015) 11 SCC 502; Union of India .vrs. K.A. Najeeb – 2021 SCC Online SC 50 and The National Investigation Agency .vrs. Areeb Ejaz Majeed – (Criminal Appeal No. 389/2020 – Bombay High Court decided on 23.02.2021)**, has argued that gross delay in disposal of the trial would justify invocation of Article 21 of the Constitution of India, and consequential release of the under trial on bail.

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He would submit that there is a fundamental breach of the Constitutional right of the applicant/accused to have a speedy trial, therefore, further incarceration would add to illegality. The bottom line of his submission is, since it is impossible to conclude the trial in near future, it is obligatory to release the applicant, an under trial, on bail. The learned Counsel for the applicant also took me through certain part of the cited judgments to impress that, in serious crimes involving the offences under - Narcotic Drugs and Psychotropic Substances Act, 1985; Unlawful Activities (Prevention) Act, 1967; Terrorist and Disruptive Activities (Prevention) Act, 1987 also the Courts have recognized the right to fair and speedy trial and released the under trials on bail.

15. On the other hand, the learned A.P.P. has straneously argued that mere delay in concluding trial cannot be a sole criteria for releasing accused of serious crime on bail. She would submit that the gravity of the offence, seriousness of the crime, impart on the society, do matters while deciding the entitlement for bail. In support of said contentions, the learned A.P.P. has placed reliance on the decisions in cases of - **Sudha Singh .vrs. The State of Uttar**

Pradesh and another – (Criminal Appeal No. 448/2021 @ Special Leave Petition (Criminal) No. 3577/2020, decided on 23.04.2021); National Investigating Agency vrs. Zahoor Ahmad Shah Watali – (2019) 5 SCC 1; Kalyan Chandra Sarkar .vrs. Rajesh Ranjan @ Pappu Yadav and another – (2004) 71 SCC 528; State of Gujarat .vrs. Mohanlal Jitmalji Porwal and another – (1987) 2 SCC 364 and Nimmagadda Prasad .vrs. Central Bureau of Investigation – (2013) 7 SCC 466.

16. On facts, the learned A.P.P. submitted that till date the trial Court has examined 37 witnesses and the process has geared up. She would submit that there were glitches in the smooth progress of trial, since number of accused represented by various Advocates and different kinds of application are filed. However, the prosecution will endeavor to expedite the process by examining the remaining witnesses at the earliest. She has canvassed that due to current global pandemic situation the work of trial Court has been effectively hampered, which cannot be considered as demerit of the prosecution agency to facilitate expediting the process.

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Lastly she would submit, that though the applicant was in jail for 6 years, that alone does not gives him a right to claim bail, particularly, when his case was repeatedly tested and turned down on merits by this Court.

17. During pendency of this application, this Court was of the view to take a stock of the progress of the trial. Accordingly, vide order dated 16.12.2020, this Court has called report from the trial Court about the progress of the trial. Inasmuch as directed the trial Court to prepare a schedule of trial for early disposal. In response, the trial Court has submitted its report showing the progress of trial, along with difficulties faced in expediting the trial.

18. Be that as it may, as per the tabular chart furnished by the learned A.P.P., till 05.03.2021 total 37 witnesses have been examined which can be considered as a substantial progress in the trial. Particularly, on the background that till the date of filing of this application, the trial Court had examined only 6 witnesses. Needless to say that thereafter, the normal functioning of the trial Courts was held up due to current global pandemic situation. Therefore,

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it can be reasonably expected that on restoring the normalcy in Court functioning, the trial would be progressed with a reasonable speed.

19. Therefore, at this juncture, on account of mere delay in trial, the applicant/accused cannot be enlarged on bail, particularly when he is charged with serious economic offences involving allegation of duping near about 800 peoples for huge sum Rs. 127 Crores. Already this Court has extended the time to conclude the trial till 03.09.2021, therefore, till that time the urge for grant of bail requires no consideration. In case the trial Court is unable to conclude the trial till the extended period, then the applicant can revive his request for bail.

20. While parting with the order, it is necessary to issue certain directions to the trial Court to protect the right of under trial to have speedy trial. The trial Court shall fix a specific time slot in each week for conducting the trial. The trial Court shall make every endeavor to conclude the trial within extended period. The State shall secure the presence of the witnesses on each date, as directed by the trial Court.

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The State shall make prompt arrangement of incharge prosecutor, in case the special prosecutor is in difficulty. The State shall take a review of the remaining witnesses and examine the witnesses whose evidence they deem it to be necessary.

In that view of the matter, at this stage the applicant is not entitled for bail, hence the following order.

ORDER

- (i) Criminal Application is dismissed with liberty to the applicant/accused to approach this Court after 03.09.2021, if the trial is not concluded.
- (ii) The Trial Court and State are directed to follow the directions contained in paragraph No. 22 of this order and to act accordingly.

JUDGE

Rgd.