

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 169 OF 2022

Dada @ Pravin Bhalchandra Wani	... Applicant
Versus	
The State of Maharashtra	... Respondent

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Mr. Joydeep Chatterji, Advocate for applicant
Mr. G. O. Wattamwar, APP for respondent - State

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CORAM : R. G. AVACHAT, J.

DATED : 18th JULY, 2022

PER COURT :-

This is an application for bail under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.I-36/2017, registered with M.I.D.C. Police Station, District Ahmednagar, for the offences punishable under Sections 304, 328 read with 34 of the Indian Penal Code and under Sections 65(a)(b)(c)(d)(e)(f), 68(a)(b), 80(1)(2) of the Maharashtra Prohibition Act and under Sections 3(1)(i)(ii), 3(2) and 3(4), 4 of the Maharashtra Control of Organized Crime (MCOC) Act, 1999.

2. Heard. Perused the First Information Report (FIR).

This Court had earlier rejected the applicant's application for bail on merits. The present application has been moved for bail on the ground of long incarceration. The learned Advocate for the applicant would submit that the applicant has been behind the bars for little over 5 ½ years. Charge has not yet been framed. There are over 15 accused persons. Witnesses to be examined are more than 130 in number. It is not known as to when trial would commence and come to an end. The learned Advocate has relied on the judgment of the Apex Court in the case of *Ashim @ Asim Kumar Haranath and others vs National Investigation Agency* (Criminal Appeal No. 1525 of 2021), decided on 01.12.2021. The learned Advocate ultimately urged for grant of application.

The learned APP would, on the other hand, opposed the application.

3. Considered the submissions advanced. Merits of the matter cannot be gone into, since the applicant's application for bail has already been rejected by this Court on merits. It is, however, to be stated that the applicant is facing charge for the offence punishable under MCOC Act. Punishment provided for the offence is

of life imprisonment or death. It is a case of consumption of hooch. The applicant is not an authorised dealer in Methyl and Ethyl alcohol. He is alleged to have supplied methyl and ethyl alcohol in huge quantity to the main accused for manufacturing of spurious liquor. In a party, such spurious liquor was served. As a result thereof, nine persons lost their lives. Many became permanently disabled. Two of them became blind. The trial Court while rejecting the application for bail has observed that charge could not be framed since all the accused persons moved application for bail one after the another. The delay in framing of the charge has been attributed to the applicant and co-accused. Needless to mention that once the trial commences on framing of the charge, the prosecution puts forth such a ground for rejection of bail application. Under Section 57 of the I.P.C. for the purpose of fraction, the life imprisonment is stated to be for twenty years. Considering the seriousness of the offence and the punishment provided therefor, the applicant's incarceration is not even $\frac{1}{4}^{\text{th}}$ of the punishment provided.

4. True, in the case of ***Ashim*** (supra), the Apex Court has observed thus:

“11. We have to balance the nature of crime in reference to which the appellant is facing a trial. At the same time, the

period of incarceration which has been suffered and the likely period within which the trial can be expected to be completed, as is informed to this Court that the statement of PW-1/de-facto complainant has still not been completed and there are 298 prosecution witnesses in the calendar of witness although the respondent has stated in its counter affidavit that it may examine only 100 to 105 witnesses but indeed may take its own time to conclude the trial. This fact certainly cannot be ignored that the appellant is in custody since 6th July, 2012 and has completed nine and half years of incarceration as an undertrial prisoner.

12. This Court has consistently observed in its numerous judgments that the liberty guaranteed in Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial is imperative and the undertrials cannot indefinitely be detained pending trial. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the Courts would ordinarily be obligated to enlarge him on bail.

13. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. At the same time, timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice.”

5. The facts of the case before the Apex Court would indicate that the applicant therein was behind the bars for little over nine years. It was not an offence against human body. On facts the case relied on is distinguishable.

6. It is reiterated that for the reasons given in para 3 above, this Court is not inclined to grant the applicant, bail. The Bail Application is rejected.

7. The applicant would be at liberty to move again if the trial is not commenced and/or concluded within a period of 1 ½ years.

[R. G. AVACHAT, J.]

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