

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 175 OF 2022

James Jaffrin Almeida @ Sam ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr. Vinod Kashid for the applicant.

Mr. Ajay Patil - APP for the respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATED : MARCH 15, 2022.

P.C. :

. The applicant is seeking bail in connection with Crime No. 55 of 2015 registered with Panvel Railway Police Station for the offence punishable under section 395, 397 and 120(B) read with Section 34 of Indian Penal Code and Section 3 and 25 of Arms Act. The First Information Report was registered on 4th August 2015. Subsequently provisions of Maharashtra Control of Organized Crime Act (MCOC Act) were applied. The applicant was arrested on 29th October 2015.

2. According to the prosecution the applicant is the master mind in the present offence, who had chalked out the plan and pursuant to that the offence was committed. The prosecution case is that on 3rd August 2015 the complainant was travelling by Konkan-Kanya Express from Mumbai to Goa. He was accompanied by another

person. The complainant is the goldsmith. He was carrying gold worth Rs.71.56 lakhs. While they were travelling, at about 4.20 a.m. of 4th August 2015, the accused entered into the compartment of train. They snatched the bag and started breaking chain of bag. The complainant started shouting. One of them showed pistol. The other person was carrying knife. The complainant was robbed of gold ornaments. FIR was registered. The applicant was arrested. On completing investigation charge-sheet was filed.

3. This is the second application for bail. Previous bail application was rejected by this Court vide order dated 14th February 2019.

4. The learned Advocate for the applicant submits that the applicant is in custody for a period about 6 and ½ years. There is no progress in the trial. The applicant cannot be kept in custody for inordinate period. The Roznama shows that there is no fault on the part of the accused for delay in trial. The prosecution has examined only one witness on 12th February 2020. Witness is part heard almost for a period of more than 2 years. The delay is caused by the prosecution. Several applications were preferred before the trial Court under Section 309 of Cr.P.C. to expedite and conclude the trial. There is no progress in trial.

5. Learned APP submit that the trial has commenced. One witness is examined. On account of pandemic and various other circumstances, the other witnesses could not be examined. There are

about 20 witnesses proposed to be examined by the prosecution. Learned APP tendered reports submitted by the Special Public Prosecutor approving in trial Court and Senior Inspector of Police. It is submitted that previous application preferred by the applicant was rejected on merits. No ground is made out for entertaining the present application. Applicant is having criminal antecedents. 13 cases were registered against applicant.

6. Cross-examination of the witness could not be completed due to various reasons. Some of the accused are on bail and some are in custody. The prosecution has not delayed the trial.

7. Undisputedly, the applicant is in custody from 29th October 2015. Thus he is in jail for about 6 and ½ years.

8. The learned advocate for the applicant has tendered affidavit of the applicant dated 14th March 2022 affirmed by Jailor, Taloja Central Prison where the applicant is presently detained. The affidavit mention that the applicant has been acquitted or discharged in 6 cases. In one case the applicant has been convicted and sentence has been suspended by this Court by granting bail to him. 6 pending cases are triable by Magistrate. The applicant is on bail in all those cases. While rejecting the previous application, the fact that some of the cases had resulted in acquittal was not considered. Three years have passed after rejecting previous application. There is no progress in trial.

9. It is pertinent to note that about 2 years ago the evidence of first witness is being recorded. His cross-examination is yet to be completed. The report submitted by the learned APP appearing before the trial Court indicates that the prosecution proposes to examine 20 other witnesses and it would take another year to complete the recording of evidence. The applicant is in custody for about 6 and ½ years. The restrictions under section 21(4) of MCOC Act would not be impediment in granting bail due to prolonged incarceration of accused without trial in the present case.

10. Considering these circumstances, the case for grant of bail is made out. Hence, the following order:-

ORDER

i) Bail application is allowed and disposed of.

ii) The Applicant is directed to be released on bail in connection with C.R. No. 55 of 2015 registered with Panvel Railway Police Station on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iii) The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of sureties;

(iv) The applicant shall report Panvel Railway Police Station once in six months on First Saturday of the month between 11.00a.m. to 1.00p.m till further orders.

(v) The applicant shall not approach witnesses. He shall not tamper with evidence.

(PRAKASH D. NAIK, J)