

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.292 of 2022

Kalika Prasad Nukhai Malhar	]	..	Applicant
vs.			
State of Maharashtra	]	..	Respondent

Mr.Datta Mane a/w Akash Yadav, for the Applicant.

Mr.S.H. Yadav, APP for the State.

CORAM : BHARATI DANGRE, J

DATE : 23RD AUGUST, 2022.

P.C.

1] The learned counsel for the Applicant has placed on record a copy of the order dated 05.01.2022 in Bail Application No.430 of 2021.

2] The Applicant is charged in the same CR, being CR No.II-7 of 2016 which invoke offence punishable under Section 8(c), 22, 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. He came to be arrested on 24.05.2016.

On completion of investigation charge-sheet was filed in the Court of Special Judge, Thane, in the case bearing NDPS Special Case No.63/2016 which is pending for trial.

3] Considering the pendency of the case for considerable time, directions were issued to expedite the same, but till date trial is not concluded.

The co-accused Sachin Vartak came to be released on bail by this Court by an exhaustive order dealing with the position of law as regards delay in conducting the trial as propounded by the Hon'ble Apex Court and by making reference to the latest decision of the Hon'ble Apex Court in the case of Union of India vs. K.A. Najeeb, by particularly considering that bar which operate under the special statute would not forbid the Court from releasing the accused on bail, on account of non-completion of the trial within reasonable period.

4] The observations by the learned Single Judge, are equally applicable to the present Applicant :

“25. In paragraph 12 of the decision in Union of India Vs. K.A.Najeeb, it was observed as follows :

“12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the NDPS Act') which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh Vs. State (NCT of Delhi) (1999)9-SCC-252, Babba Vs. State of Maharashtra (2005)11-SCC-569 and Umarmia Vs. State of Gujarat (2017)2-SCC-731 enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.”

“30. Thus, embargo under the provisions of Special Acts shall not be an impediment in grant of bail by this Court on the ground of incarceration of accused in custody for a long time, more particularly in the light of various decisions of Supreme Court”.

5] The Applicant is also incarcerated since 2016 and despite directions being issued, trial cannot be concluded. Right to speedy trial

is a right available and applicable to the Applicant and his long incarceration on account of trial being not concluded, deserve his release on bail.

6] It is made clear that the observations made above are restricted for determination of the application and the trial Court in any way shall not be influenced by the said observations, which are limited and restricted for this purpose.

Hence, the following order :

(a) Application is allowed.

(b) Applicant – Kalika Prasad Nukhai Malhar shall be released on bail in connection with C.R.No.II-7/2016 (NDPS Special Case No.63/2016) registered with Wada Police Station on furnishing P.R. bond to the extent of Rs.50,000/- with one or more sureties of the like amount.

The Applicant shall be released on cash bail of Rs.50,000/- for a period of four weeks in lieu of sureties. During the said period the applicant shall arrange for the sureties.

(c) The applicant shall report Wada Police Station once in a month on every first Saturday between 11.00 a.m. and 1.00 p.m. till conclusion of trial.

(d) The applicant shall not leave India without prior permission of Special Court.

(e) The Applicant shall deposit his passport before Special Court.

(f) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(g) The Applicant shall furnish details of his residence to the trial court as well as Wada Police Station.

(h) The Applicant shall regularly attend trial, on every date, unless he is exempted.

[BHARATI DANGRE, J]