

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.373 OF 2022

Ajit Atmaram Aparaj

Applicant

versus

The State of Maharashtra

Respondent

Mr.C.J.Joveson with Mr.Simran Patil i/by Akshada Pasi, Advocate for applicant.

Mr.Vaibhav Bagade, Special Public Prosecutor for State.

API Sachin Gawade, Unit VI, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 30th March 2022

PC :

1. This is an application for bail in connection with CR No.45 of 2015 investigated by DCB, CID, Unit-6, Chembur, Mumbai for offences under Sections 341, 328, 344, 364A, 386, 387, 392, 120B, 34 of Indian Penal Code r/w 34 of Indian Penal Code and also under Section 3 r/w 25 of Arms Act r/w Sections 37(1) and 135 of Bombay Arms Act. The applicant was arrested on 26th April 2015.

2. The case of prosecution is that complainant's son aged about 21 years had left residence on 11th March 2015 at about 10.30 pm. He did not return home. In the midnight the complainant received a message from cell phone of his son that he has been kidnapped. The complainant tried to make a call on the cell phone of the victim but it was found switched off. Thereafter father of the victim and others visited police station. Missing complaint was registered. The complainant and others tried to search victim. On 12th March 2015

the complainant received call from cell phone of his son. The unknown person had conversation with complainant and stated that his son has assaulted his two boys and if he informs police, his son will be killed. The complainant then realized that his son has been kidnapped by unknown persons. Hence, complaint was registered with Tilak Nagar Police Station on 12th March 2015 for the offence under Section 365, 506(II) of Indian Penal Code vide CR No.95 of 2015. Thereafter the unknown person repeatedly called the complainant and demanded Rs.2 crores for release of complainant's son. The victim boy was found at Nashik. His statement was recorded on 16th April 2015. He narrated the incident of kidnapping and the fact that he was in custody of accused for several days. He was released by accused on 13th April 2015 on the ground that ransom amount was received by kidnappers. On completing investigation charge sheet was filed.

3. The applicant had preferred application for bail before this Court viz Bail Application No.2273 of 2017. The said application was rejected by order dated 26th November 2018. However, Trial Court was directed to make an endeavour to proceed with trial as expeditiously as possible.

4. Since there was no progress in trial, pursuant to order dated 26th November 2018, the applicant preferred another application viz Bail Application No.3008 of 2019 for bail before this Court. It was submitted at the instance of applicant that he is in custody for a period of about six years. There is no progress in trial. The recording of evidence of first witness had commenced in the year 2017 and it is not yet over. In spite of directions to expedite trial,

there is no progress in trial. Reliance was placed on roznama of the proceedings before Trial Court. The application was opposed by prosecution. Learned Special Public Prosecutor appearing in the said application had contended that pending evidence of PW-1, PW-2 has been examined. The accused had preferred multiple applications for bail. The prosecution proposes to examine about 82 witnesses out of which 39 witnesses are panch witnesses. There would be no delay if defense co-operate with conducting trial. There are about ten accused in the case.

5. Vide order dated 12th August 2021 the said application was rejected and directed Trial Court to conclude trial within a period of six months. The evidence of PW-1 be concluded immediately. The prosecution shall take steps to make available all the witnesses for examination on the date of hearing before Trial Court. The defense shall co-operate in concluding trial. The Trial Court shall give priority to this case considering that trial was expedited and the accused are in custody for a period of about six years. In the event trial is not concluded within six months, the applicant was granted liberty to prefer fresh application for bail.

6. The applicant has again preferred this application for bail primarily on the ground that trial is not concluded within stipulated period referred to in the order dated 12th August 2021. The applicant is in custody for six and half years.

7. Learned advocate for applicant has submitted as follows :

(a) The applicant is in custody from 26th April 2015. He is

in jail for a period of about 6½ years;

(b) There is no progress in trial. Although this Court has repeatedly expedited trial, it has not been concluded expeditiously. The trial is proceeding at snail's pace. Two witnesses are under examination and evidence of both the witnesses is not yet concluded;

(c) The applicant cannot be kept in custody for indefinite period. Prosecution proposes to examine several witnesses. Considering the speed with which trial is proceeding it is not clear as to when the trial would come to an end;

(d) The applicant has not delayed the trial. He cannot delay the trial as it is not beneficial to him. There is no material to show that applicant is delaying the trial;

(e) Vide orders dated 26th November 2018 and 12th August 2021 directions were issued by this Court to conclude trial expeditiously and in the event trial is not concluded within stipulated period, liberty was granted to the applicant to file fresh application for bail;

(f) Being in custody for substantial period of time, the applicant has preferred this application for bail, since in spite of directions of this Court the trial could not be concluded;

(g) Incarceration of applicant-accused in custody for indefinite period without subjecting him to trial would be violation of Article 21 of Constitution of India;

(h) The applicant has been falsely implicated in this case. The applicant belongs to educated family. His parents were public servants. The applicant is highly educated person. He is Mechanical Engineer and gold medalist in Industrial Engineering and into multiple businesses of Engineering Consultancy and buying and selling of old vehicles auctioned by banks and of insurance vehicles

and invest in into agricultural land, converting the same in non agricultural category and selling the NA plots for almost last twenty years;

(i) The applicant is shown to be involved in other cases. He has been implicated in other cases after arrest in present case. Cases registered with Rabale Police Station, Neral Police Station are disposed of as prosecution had filed report us.169 of Cr.PC. In respect of cases registered with Igatpuri Police Station and Kurla Police Station, the applicant has been discharged. The fifth case investigated by CID is presently pending and pending for judgment.

8. Reliance is placed on the order passed by Supreme Court in the case of **Chintan Vidyasagar Upadhyay Vs. The State of Maharashtra**¹, wherein accused is charged for the offence u/s.302 of Indian Penal Code and on the ground that accused was in custody for nearly six years, the Supreme Court was pleased to grant bail to him. Learned counsel relied upon decision of this Court in **Sachin Atmaram Vartak Vs. The State of Maharashtra**², wherein bail was granted to the accused who was facing prosecution under NDPS Act. Bail was granted on the ground that accused was in custody for substantial period of time.

9. Learned Special Public Prosecutor Mr.Bagade submitted that trial has already commenced. Complainant is senior citizen. He is attending Trial Court on every date for recording evidence. His examination-in-chief is concluded. He is under cross-examination. The trial is delayed by accused. Several applications are preferred at the instance of applicant and other accused resulting in delay in

1 Special Leave to Appeal (Cri.) No.2543/2021, dated 17-9-2021

2 Bail Application No.430 of 2021, decided on 5-1-2022

proceeding with trial. Two witnesses are under examination. The prosecution is always ready to proceed with matter. There is no delay on the part of prosecution. The offense is of serious nature. The applicant is involved in the incident of kidnapping the victim who was in the custody of accused for several days. There is sufficient evidence against applicant. The previous applications for bail preferred by applicant were rejected by this Court. The prosecution would make endeavour to proceed with trial expeditiously. There is no co-operation from the accused.

10. In rejoinder, learned counsel for applicant has submitted that submission that accused has delayed trial by preferring applications, is devoid of merits. Learned counsel has placed on record compilation of applications filed by the applicant before Trial Court with details as to for what purposes said applications were preferred along with date of filing such applications. It is submitted that applications were preferred in exercise of his right to defend himself. The purpose of preferring such applications was genuine. Learned counsel for applicant relied upon roznama of the Trial Court in support of his submission that applicant has not caused any delay in trial.

11. Perused the documents on record. Undisputedly the applicant is arrested on 26th April 2015. The FIR was registered on 12th March 2015 for offence u/s.365, 506(II) of IPC. Subsequently Sections 341, 328, 344, 364A, 386, 387, 392, 120B, 34 of IPC r/w Sections 3/25 of Arms Act were invoked. On completing investigation charge sheet is filed. The first application for bail filed before this Court was rejected by order dated 26th November 2018. However, considering

submissions of learned counsel for applicant that he is in custody for substantial period of time, this Court had directed that Trial Court shall make an endeavour to conclude trial expeditiously.

12. Evidence of PW-1 (complainant) had began in 2017. The examination-in-chief was recorded on 6-11-2017, 16-11-2017, 5-4-2018, 10-1-2020, 17-1-2020, 31-1-2020, 20-2-2020, 6-3-2020, 13-3-2020, 4-1-2020, 19-1-2021, 8-2-2021, 23-3-2021, 14-10-2021. The cross-examination began on 14-10-2021. Subsequently the case was listed on 27-10-2021, 1-12-2021 and 20-12-2021. On perusal of the applications preferred by applicant it cannot be said that applications were preferred with a view to delay trial. Two witnesses are under examination before Trial Court and their evidence is yet to be concluded.

13. The applicant had preferred another application before this Court which was rejected by order dated 12th August 2021. On perusal of the said order it is apparent that submissions were made by prosecution that prosecution intends to examine about 82 witnesses out of which 39 witnesses were panch witnesses. New Special Public Prosecutor has been appointed. After hearing both sides and also considering the fact that accused are in custody for a substantial period of time, this Court had directed Trial Court to conclude trial within six months. The order makes it clear that trial would proceed without delay and in the event bail is not concluded within stipulated time, the applicant was granted liberty to file fresh application for bail. Thus, it is apparent that trial is proceeding with slow speed. The prosecution has admittedly proposed to examine 82 witnesses and so far only two witnesses are under examination. It is

not clear as to how much time it would take to conclude the trial. It may be that on account of pandemic there were difficulties in smooth progress of trial, however, the fact remains that accused is under incarceration for about 6½ years. The application preferred by applicant does not indicate that the same were made to delay the trial.

14. Although the recording of evidence of PW-1 had commenced in 2017, it is not yet concluded. The second witness is being examined pending examination of PW-1. Considering the number of witnesses prosecution proposes to examine, it cannot be presumed how much time it would take to conclude the trial.

15. The Hon'ble Supreme Court granted bail to the accused vide order dated 17th September 2021 in Criminal Appeal No.2543 of 2021 in the case of Chintan Upadhyay Vs. State of Maharashtra (supra). He was incarcerated for nearly 6 years. The trial was in progress and 28 witnesses were examined and 12 were yet to be examined. The accused was charged for the offences under Sections 302, 396, 201, 109, 120B r/w 34 of Indian Penal Code.

16. In the case of **Sanjay Chandra Vs. CBI**³, it was observed that object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly

3 AIR-2012-SC-830

tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. The grant or denial is regulated to a large extent by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.

17. In the case of **Thana Singh Vs. Central Bureau of Narcotics**⁴, it was observed that the accused was languishing in prison for more than 12 years and awaiting his trial for the offences under the provisions of NDPS Act. He was consistently denied bail. The maximum punishment for the offence was 20 years and he remained in detention for the period exceeding one half of the maximum period of imprisonment. The Court issued directions on various

4 (2013)2-SCC-590

issues, which would be of assistance to conclude trials pending in Courts expeditiously.

18. In the case of **Hussain and another Vs. Union of India**⁵, it was observed that the Supreme Court has given directions in number of cases about speedy conclusion of trials. Speedy trial is part of reasonable, fair and just procedure guaranteed under Article 21 of Constitution of India. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. If the accused is in custody for a grave offence such person may not be released if trial is delayed. While a person in custody for a grave offence may not be released if trial is delayed, trial has to be expedited or bail has to be granted in such cases. The Court issued directions and one of them was, as a supplement to Section 436-A but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence likely to be awarded if conviction is recorded, such undertrial must be released on personal bond. Such an assessment must be made by the Trial Courts concerned from time to time. Timely delivery of justice is a part of human rights. Denial of speedy justice is a threat to public confidence in the administration of justice.

19. In Abdul Rehman Antulay Vs. R.R.Nayak (1992)1-SCC-225, it was held that speedy trial at all stages is part of right under Article 21. In the case of Hussainara Khatoon Vs. State of Bihar (1995)5-SCC-326, it was observed that general orders for release of undertrials without reference to specific fact situations in different

5 (2017)5-SCC-702

cases may prove to be hazardous. While there can be no doubt that undertrial prisoners should not languish in jails on account of refusal to enlarge them on bail, for want of their capacity to furnish bail, these are matters to be dealt with on case to case basis keeping in mind guidelines laid down by Court. Sympathy for undertrials who are in jail for long time on account of the pendency of cases, has to be balanced having regard to the impact of crime.

20. In Vivek Kumar Vs. State of U.P (2000)9-SCC-443, bail was granted to accused by Supreme Court on the ground that it is quite a long period that he is in custody. In Babba Vs. State of Maharashtra (2005)11-SCC-569, the accused was in custody for a long period for offence under TADA Act. In Paramjit Singh Vs. State (NCT of Delhi), the Supreme Court granted bail. The accused was prosecuted under TADA Act. Earlier the application was rejected and trial was expedited. There was no progress in trial. In the case of Angela Sontakke Vs. State of Maharashtra (2021)3-SCC-723, the Supreme Court granted bail to the accused facing prosecution under UAPA Act on the ground that accused is in custody for five years.

21. The settled principle of law is that prolonged custody affects fundamental rights under Article 21 of Constitution of India. However, there is no debate that incarceration in custody for long period without trial or completion of trial affects personal liberty guaranteed under Article 21 of Constitution of India.

22. Speedy trial is right of all the undertrial prisoners. The decisions referred to herein relates to grant of bail on the ground of prolonged custody in different kind of offences including those

wherein there are statutory restrictions. In the recent decision in the case of Union of India Vs. K.A.Najeeb (supra), the Hon'ble Supreme Court was dealing with an appeal challenging bail granted to the accused for the offence under UAPA Act and IPC. The accused therein was granted bail by the High Court of Kerala, for the offences under Sections 143, 147, 148, 120B, 341, 427, 323, 324, 326, 506, 201, 202, 153A, 212, 307, 149 IPC, u/s.31 of Explosive Substances Act and u/s.16, 18, 18B, 19 and 20 of UAPA act, 1967. The accused had approached the High Court for third time questioning the Special Court's order denying bail. The High Court through the impugned order released the accused on bail noting that trial is yet to begin, though the respondent had been in custody for four years. Placing emphasis on the mandate for an expeditious trial under the National Investigation Agency Act, 2008, the High Court held that the undertrial-respondent could not be kept in custody for too long when the trial was not likely to commence in the near future, for not doing so would cause serious prejudice and suffering to him. The accused had spent nearly five years and five months in judicial custody. In the appeal before Supreme Court, the contention of the appellants-Union of India was that the High Court erred in granting bail without adverting to the statutory rigours of Section 43-D(5) of UAPA Act. Relying upon the judgment in the case of **National Investigation Agency Vs. Jahoor Ahmad Shah Watali**⁶, it was highlighted that bail proceedings under the special enactment were distinct and the courts are duty bound to refuse bail where the suspect is prima facie believed to be guilty. It was further contended that in numerous prior rounds before the Special Court and the High Court, there emerged enough reasons to believe that the respondent was, prima facie, guilty of the accusations made against him. The

fact that the respondent had absconded for years was pressed into aid as legitimate apprehension of his not returning if set free. The NIA had filed an affidavit suggesting to examine 276 witnesses and at the same time expecting to conduct the trial on a day to day basis and complete it within a year. The respondents, however, had contended that many co-accused had been acquitted and few had been convicted. They were awarded sentence of not more than eight years. The accused had suffered incarceration of five and half years without trial having started. Relying on the decision in the case of Shaheen Welfare Association and Hussain and another (*supra*), it was argued that protracted incarceration violates the respondent's right to speedy trial and access to justice, in which case, Constitutional Courts could exercise their powers to grant bail, regardless of limitations specified under special enactments. In paragraph 10 it was observed that it is a fact that the High Court in the said case has not determined the likelihood of the respondent being guilty or not, or whether rigours of Section 43-D(5) of UAPA Act are alien to him. The High Court instead appears to have exercised its power to grant bail owing to the long period of incarceration and the unlikelihood of the trial being completed anytime in the near future. The reasons assigned by the High Court are apparently traceable back to Article 21 of Constitution, of course without addressing the statutory embargo created by Section 43-D(5) of UAPA Act. In paragraph 11 it is observed that the High Court's view draws support from the batch of decisions of Supreme Court including Shaheen Welfare Association laying down that gross delay in disposal of such cases would justify the invocation of Article 21 of Constitution and consequential necessity to release the undertrial on bail.

23. In the light of aforesaid factual aspects, it is clear that applicant is under incarceration from 26th April 2015. Hence case for grant of bail is made out.

ORDER

- (i) Bail Application is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.45 of 2015 investigated by DCB, CID Unit-6, Chembur, Mumbai and originally registered with Tilak Nagar Police Station Mumbai vide CR No.95 of 2015, on executing PR bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- (iii) The applicant is permitted to furnish cash bail in the sum of Rs.50,000/- for eight weeks in lieu of sureties;
- (iv) The applicant shall report DCB, CID, Unit-6, Chembur once in a month on every first Saturday of the month between 11 to 1 pm till further orders;
- (v) The applicant shall deposit his passport, if any, with Investigating Agency;
- (vi) The applicant shall not tamper with evidence.

(PRAKASH D. NAIK, J.)

MST