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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1012 OF 2022**

Manoj Namdev Gajakosh	]	..	Applicant
vs.			
State of Maharashtra	]	..	Respondent

Mr.Prashant Pandey a/w Darshit Jain i/b W3Legal LLP for the Applicant.

Smt.Anamika Malhotra, APP for the State.

PI Kiran Aher, DCB CID, Unit IX present.

CORAM : BHARATI DANGRE, J

DATE : 2ND AUGUST, 2022.

P.C.

1] The applicant came to be arraigned as accused in CR No. 44/2012 registered with DCB CID, Unit IX, Mumbai for the offences punishable under Sections 302, 363, 465, 467, 470, 471, 419, 420 read with 120(B) read with 34 of the Indian Penal Code.

On completion of investigation, charge-sheet was filed under Section 302, 465, 471 read with 120(B) of the Indian Penal Code on 09.05.2013 and the applicant is facing trial in Sessions Case no.548/2012. The applicant came to be arrested on 10.04.2012.

2] The learned counsel for the Applicant submits that in the year 2014 he moved an application which was withdrawn and trial was expedited. Since there was no progress in the trial, he moved another

application before this Court and this Court was pleased to once again expedite the trial and directed that the evidence shall be recorded as far as possible by the end of 30.11.2018. He moved an application for his release on temporary bail which was rejected and for the third time he approached this Court vide Bail Application No.1540/2021 which was withdrawn on 02.07.2021, as he was desirous of approaching the Sessions Court in the wake of directions issued by the High Power Committee in the background of Covid Pandemic. The application was rejected on 15.07.2021.

3] The learned counsel seeks release on bail by submitting that though the trial was expedited in the year 2014, till date only 8 to 10 witnesses are examined and the applicant continue to remain in custody for more than a decade.

He has placed reliance upon a Notification issued by the Government of India, Ministry of Home Affairs dated 27.09.2014 and his submission is that, he deserves release on bail by considering the life imprisonment to be of 20 years and its half would be 10 years and therefore, he is entitled to be released on bail by taking advantage of Section 436A of the Cr.P.C.

4] The application is opposed by the learned APP on merits by submitting that the charge-sheet attributes clear role to the Applicant as one of the assailant, who is responsible for death of a senior citizen Arunkumar Tikku and the complainant has witnessed the two persons assaulting him and after some time the said person was lying in pool of blood while the two assailants fled away.

5] The learned APP has filed affidavit, wherein, on the basis of the

material compiled in the charge-sheet, the role of the applicant has been clearly seen. It is further submitted that the applicant has been identified in the Test Identification Parade conducted on 02.06.2012 by the original complainant and another witness Suresh Gupta. Apart from this, it is submitted that the CDR of the applicant and other accused persons is also collected and compiled in the charge-sheet which reveal that the present applicant was constantly in touch with the other co-accused during the commission of murder of Arunkumar Tikku and even location of the present Applicant was also traced to be same where the crime was committed.

6] The learned APP submits that the applicant has actively participated in the crime and he caught hold of the deceased and was accompanied by co-accused Jagdish and eye witness to the said incident establish the case of the prosecution.

7] The learned APP also submits that 11 witnesses are examined till date and it is only on account of the approach of the co-accused, trial was delayed as irrelevant issues are being raked up on every date. Relying upon the roznama of the proceedings it is sought to be submitted that the co-accused Vijay is responsible for the delay in trial.

8] It is not in dispute that the applicant is incarcerated for more than 10 years and recently the Apex Court in the case of **Indrani Mukharji vs. CBI in Special Leave to Appeal (CRI) No.1627/2020** has held the accused entitled for being release on bail in the light of fact that she was in custody for six and half years and on being submitted that the trial would not complete soon in view of large number of witnesses to be examined.

9] Reliance is also placed upon order of the Hon'ble Apex Court in the case of ***Chintan Vidyasagar Upadhyay vs. State of Maharashtra in Special Leave to Appeal(Crl.)No(s).2543/2021***, where incarceration of six years and time likely to be consumed in concluding the trial was considered to be a fit ground to release the Applicant on bail.

10] Right to fair and speedy trial has been identified as a facet of Article 21 and in terms of criminal jurisprudence every person accused of an offence is presumed to be innocent unless proven guilty on prosecution establishing his guilt.

11] Recently, the Hon'ble Apex Court in the case of ***Union of India vs. K.A. Najeed in (2021) 3 SCC 713***, has reiterated that liberty granted by part III of the Constitution covers within its protective ambit not only due procedure and fairness but also access to justice and speedy trial. Gross delay in disposal of criminal trials has been held to be a ground justifying invoking of Article 21 and consequential necessity to release under-trial on bail. The observations of their Lordships while dealing with the case of UAPA are much relevant, which reads thus :

“18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have out-rightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed any time soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of his choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.”

12] In the case of **Satender Kumar Antil vs. CBI & Anr., in Miscellaneous Application No.1849 OF 2021 in Special Leave Petition (CRL.) No.5191 Of 2021** once again the Hon'ble Apex Court has reiterated that liberty is one of the essential requirement of the modern man and it was noted that Jails in India are flooded with under-trial prisoners recording that arrest is a draconian measure resulting in curtailment of liberty as to be used sparingly as in democracy there can never an impression that it is a police state as both are conceptually opposite to each other. Recording that the criminal case in general and trial Court in particular are the guardian angels of liberty and liberty as embedded in the Code has to be preserved, protected and enforced by Criminal Courts.

Certain directions came to be issued by their Lordships for the investigating agencies and also for the Courts where it contemplate the exercise to be carried out to comply with the mandate of Section 436A at the district judicial level and High Court.

13] In the wake of above authoritative pronouncement of the highest Court of this country, long incarceration of the applicant for a decade, with the conclusion of the trial not being insight, since 34 more witnesses are to be examined, the applicant deserves his release on bail.

(a) Application is allowed.

(b) Applicant – Manoj Namdev Gajakosh shall be released on bail in connection with C.R.No.44 of 2012 registered with DCB CID, Unit IX, Mumbai on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

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

(d) 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.

(e) 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, limited and restricted for this purpose.

[BHARATI DANGRE, J]