

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

BAIL APPLICATION NO. 3386 OF 2021

Hasmukh Solanki	 Applicant
v/s.	
The State of Maharashtra	 Respondent

Mr. Milan Desai for the Applicant.
Ms. Rutuja Ambekar, APP for the State.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED : 04th APRIL, 2022.**

P. C. :-

. This is an Application under section 439 of Cr.P.C. filed by the aforesaid Applicant who is facing trial in Sessions Case No.86/2011 pending on the file of Additional Sessions Judge, City Civil & Sessions Court, Greater Bombay for offences punishable under sections 120(B), 302, 452 r/w. 34 of the Indian Penal Code, under sections 3, 25, 27 of the Arms Act and under sections 37(1)(a) & 1 35 of the Bombay Police Act.

2. Heard Mr. Milan Desai, learned counsel for the Applicant. He states that the previous Bail Application was rejected on merits by this Court (Coram : Prakash D. Naik, J.) vide order dated 03/08/2017. He submits that the Applicant was arrested on 09/03/2010 and he is in custody since past 12 years. He submits that so far, the prosecution has

examined 11 witnesses. On the last date, the statement was made that the prosecution is yet to examine 72 more witnesses. He has relied upon the decision of the Hon'ble Apex Court in *Brijesh Kumar @ Ramu v/s. The State of Uttar Pradesh in Special Leave to Appeal (Cri.) No(s).1378/2022* ; *Suleman v/s. The State of Uttar Pradesh in Special Leave to Appeal (Cri.) No.1451/2022* and *Saudan Singh v/s. The State of Uttar Pradesh in Criminal Appeal No.308/2022 (arising out of SLP (Cri.) No.4633/2021)*.

3. Learned APP states that the offence is of serious nature. She further submits that the learned Judge has observed that the Applicant had suppressed having filed the Applications not to proceed with the trial with any delay application. She submits that the Applicant was responsible in delaying the trial. Hence, he is not entitled for bail solely on the ground of parity.

4. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. The records reveal that on 11/02/2010, three unknown persons had entered the office of the advocate Shahid Azmi armed with pistols.

Two persons fired at advocate Shahid Azmi whereas the third person threatened the complainant by pointing the pistol at him and told him to go away. The Applicant and the other co-accused were arrested and charge sheet was filed. By order dated 23/07/2015, this Court had expedited the trial and directed to conclude the trial within nine months. The said period was further extended by five months by order dated 09/06/2016 and again, by six months by order dated 30/06/2017. During the pendency of the trial, the Applicant had filed an Application for bail being Criminal Bail Application No.65/2017 which was dismissed on merits by this Court (Coram : Prakash D. Naik, J.) vide order dated 03/08/2017. Since the Applicant was in custody since 09/03/2010, this Court had directed the Trial Court to conclude the trial within a period of six months. Time to conclude the trial was again extended by one year vide order dated 25/01/2018 and by further period of one year by order dated 06/06/2019.

6. The Applicant has filed this Application mainly on the ground of the delay in concluding the trial. It is stated that so far, 11 witnesses have been examined. On the last date of hearing, a statement was made that 72 witnesses are yet to be examined. Learned APP was directed to place on record the sketch line of the prosecution case.

Learned APP has not complied with the said order on the ground that the Investigating Officer is not present. The Applicant therefore continues to be in custody for 12 years without any serious attempt by the trial Court to abide by the earlier orders and to conclude the trial expeditiously.

7. In ***Saudan Singh*** (supra), the Hon'ble Supreme Court while granting bail to various convicts languishing in jail for several years pending hearing of the Appeal, directed that the case of the convicts who had completed 14 years of sentence to be put before the Board for their release under the Uttar Pradesh Prisoners Release on Probation Rules, 1938 and in respect of cases where the convicts have served out more than 10 years, should be granted bail at one go unless there are any extenuating circumstances against them. Similar was the order in ***Brijesh Kumar*** and ***Suleman*** (supra).

8. In ***Rakesh Mishra v/s. The State of West Bengal [Criminal Appeal No._/2021 (arising out of SLP (Cri.) No.5772 of 2020)]*** ; ***Sehansarpal v/s. State of U.P. and anr. [Criminal Appeal No(s).1545/2021]*** and ***Chintan Vidyasagar Upadhyay v/s. The State of Maharashtra [Petition(s) for Special Leave to Appeal (Cri.) No(s). 2543/2021]***, the

Supreme Court had ordered release of under-trial prisoners who were languishing in jail for long.

9. In the instant case, the Applicant was arrested on 09/03/2010 and is in custody for 12 years pending trial. As noted above, this Court vide order dated 23/07/2015, 09/06/2016 and again on 30/06/2017 had directed the trial Court to conclude the trial within stipulated time. It is seen that despite these orders, the trial Court did not frame the charge till 19/08/2017. The learned Judge has observed that considerable time was taken to decide the applicability of the provisions under MCOC Act and that neither the prosecution nor the accused are responsible for the delay. It is indeed a sad reflection that the trial should not even commence despite directions of this Court. The accused is in custody as an under-trial prisoner since last 12 years for an offence for which he is yet to be held guilty. Till date, 11 witnesses are examined and 72 witnesses are yet to be examined. There is thus no likelihood of trial being concluded within a reasonable time. Regardless of how much more time is required to conclude the trial, the incarceration of 12 years as an undertrial prisoner is itself in violation of the Applicant's right to speedy trial and this right would continue to be violated if he is not enlarged on bail. Hence, the Bail

Application is allowed on following terms and conditions :-

- (i) The Applicant who is facing trial in Sessions Case No.86/2011 pending on the file of Additional Sessions Judge, City Civil & Sessions Court, Greater Bombay is ordered to be released on cash bail in the sum of Rs.1,00,000/- for a period of four weeks ;
- (ii) The Applicant shall, within the said period of four weeks, furnish PR bond in the sum of Rs.1,00,000/- with one or two solvent sureties in the like amount.
- (iii) The Applicant shall not leave Mumbai City without prior permission of this court.
- (iv) The Applicant shall report to Kurla Police Station once in a month on every 1st Monday between 11.00 a.m. to 02.00 p.m. until further orders;
- (v) The Applicant shall not interfere with the witnesses and/or shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(vi) The Applicant shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.

(vii) The Applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

10. Bail Application stands disposed of in above terms.

11. Parties to act on authenticated copy of this order.

**PREETI
H JAYANI**

Digitally signed by
PREETI H JAYANI
Date: 2022.04.12
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(SMT. ANUJA PRABHUDESSAI, J.)