

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2558 OF 2022

Sanjay Malhari Date

...Applicant

V/s.

State of Maharashtra

...Respondent

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Mr.Aniket Nikam a/v Mr.Vivek N. Arote, Mr.Piyush Toshnival
i/b Mr.Amit Icham and Mr.Ashish Satpute for the Applicant.
Ms.J.S. Lohokare, APP for the Respondent-State.
Mr.S. Anant G. Saraf, Excise, Nashik is present.

CORAM : C.V. BHADANG, J.

DATE : 04 OCTOBER 2022

P.C.

. This is second bail Application by the Applicant (Accused No.1) seeking release on bail in Crime No.246 of 2021 registered with State Excise Department under Section 328 of Indian Penal Code, Section 65(a)(b)(c)(d)(e)(f), 81, 83 and 90 of the Maharashtra Prohibition Act.

2. As earlier Application being Criminal Bail Application No.319 of 202 was decided by this Bench on 3 March 2022, the present Application is placed before this Bench.

3. The aforesaid crime is registered on the basis of the complaint dated 12 October 2021 lodged by Lokesh Gaikwad, Inspector attached to the State Excise Department at Nashik.

4. According to the prosecution on 12 October 2021, a raid was conducted on prior information in field Gut No.481/1 at Saikheda Shivar, Taluka-Nifad, District-Nashik belonging to Mr.Kailash Baburao Maid, Chandrakla Vilas Kawade and the present Applicant Sanjay Date in which illicit liquor and other material for manufacture and branding of the liquor worth Rs.17,72,549/- was recovered. It appears that during the course of the investigation it was revealed that certain muddemal involved in the offence was kept at a house near Toll Plaza at Madsangavi. Accordingly a raid was conducted at House No.12 wherein the muddemal property worth Rs.3,37,253/- was recovered which was belonging to one Amol Dhanaji Jadhav who is stated to be absconding.

5. In this case after investigation a charge-sheet is filed. The Applicant was arrested on 22 October 2021.

6. I have heard the learned counsel for the Applicant and the learned Additional Public Prosecutor. Perused record.

7. It appears that there are in all eight accused out of which all the accused who are arrested except the Applicant have been either released on regular bail or they are on anticipatory bail.

8. The previous bail Application was rejected by this court on 3 March 2022 *inter alia* on the ground that there was also an attempt on the part of the Applicant and the other accused to pass off the country liquor as branded one, in as much as fake labels of the branded companies, such as Imperial Blue, See-grams, Royal Stag and Goa No.1 were found on the spot. The concerned companies had stated that the labels were fake. This Court also considered that irrespective of whether Section 328 of the Indian Penal Code is attracted, inasmuch as according to the Applicant there are no allegations that any unwholesome or stupefying substance was administered by the Applicants, much less, with an intention to commit an offence, even the offence under the Prohibition Act would attract an imprisonment of 3 years to 5 years.

9. It is necessary to note that while refusing to grant bail, in the previous Application, this Court had granted liberty to the Applicant to renew the request for bail, after a period of six months if there is no progress in the trial. It does appear that the Petitioner had approached Hon'ble Supreme Court for bail.

However, the Special Leave to Appeal (Criminal) No.6542 of 2022 was dismissed as withdrawn on 28 July 2022.

10. It transpires during the course of hearing that on account of the fact that some of the accused are said to be absconding the charge is not yet framed and thus there is no progress in the trial, after the rejection of the previous Application.

11. The learned counsel for the Petitioner has placed reliance on the decision of the Supreme Court in *Satender Kumar Antil V/s. Central Bureau of Investigation and Another*¹, in which the Supreme Court has classified various offences in Category (A) to (D). The Category (A) comprises of the offences punishable with imprisonment of 7 years or less not falling in Category (B) and (D).

12. The learned counsel for the Applicant submitted that barring Section 328 of IPC-the application of which is doubtful-the offence in the present case would fall under Category (A).

13. Supreme Court in paragraph 63 has held that in Category (A) a better exercise of discretion in favour of the accused is expected.

1 2022 SCC Online SC 825

14. The learned counsel has placed further reliance on the decision of the Supreme Court in *Union of India V/s. K.A. Najeeb*² in which the Hon'ble Supreme Court has disapproved the long period of incarceration particularly in the context of the unlikelihood of the trial being completed any time in the near future.

15. In the present case, none of the accused are said to be absconding, which may contribute to the delay in holding of the trial. The learned Sessions Judge can consider separation of trial under Section 299 of Cr.P.C.

16. Considering the overall circumstances and the fact that there is no progress whatsoever in the trial, the following order is passed.

ORDER

(i) The applicant be released on bail, on executing a P.R. Bond in the sum of Rs.25,000/-with one or two solvent sureties, in the like amount.

(ii) The applicant shall undertake to remain present during the trial, unless exempted.

(iii) The applicant shall not directly or indirectly make any attempt to tamper with the prosecution

2 (2021) 3 Supreme Court Cases 713

evidence/witnesses and shall not indulge into any similar activity as alleged.

(iv) In the event of breach of any of the conditions, the bail is liable to be cancelled.

(v) Bail bonds to be furnished before the learned Sessions Judge.

(vi) The Criminal Application is disposed of in the aforesaid terms.

C.V. BHADANG, J.