

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application (BA) No.703/2021

Nishant Aggarwal V State of Maharashtra thr PSO PS Sonegaon, Nagpur and another

Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Mr. S.V. Manohar, Senior Advocate a/b Mr. P.S. Jaiswal, Advocate for
 applicant.

Mr. V.A. Thakare, APP for State.

CORAM : ANIL S. KILOR, J.

DATE : 17-06-2022

By way of this application the applicant has approached to this Court under Section 439 of the Code of Criminal Procedure for grant of bail in connection with Crime No.07/2018 dated 04-10-2018 registered with Police Station ATS, Sadar, Lucknow, for the offences punishable under Sections 419, 420, 467, 468 and 120-B, 121(1) of the Indian Penal Code, Section 66(D) of the Information Technology Act and Sections 3, 4, 5 and 9 of the Official Secrets Act, 1923 (for short, 'Act of 1923').

ii. Mr. S.V. Manohar, learned Senior Advocate for the applicant submits that after rejection of earlier application for grant of bail, Special Leave to Petition (S.L.P.) was filed and while permitting the applicant to withdraw it, liberty was granted to approach this Court again on facts and merits. Accordingly, he

submits that the present application is moved.

It is submitted that after completion of investigation, the chargesheet has been filed and no further custody of the applicant is necessary in this case.

iii. Mr. S.V. Manohar, learned Senior Advocate has submitted that even if the allegations made in the First Information Report (FIR) are considered on its face value, Section 3 of the Act of 1922 will not apply, but at the most, Section 5 of the Act of 1923 will apply to the case of the applicant. He has further argued that, in absence of allegation that the applicant has done it with purpose prejudicial to the safety and interest of the State, which is the per-requisite for application of Section 3, the offence under Section 3 of the Act of 1923, will not apply.

iv. He has drawn attention of this Court to the reply filed by the State and submits that the case of the prosecution is that it was a sort of honey trap and Cyber activities by giving allurements. He, therefore, submits that the allegations do not indicate any intention of the applicant, prejudicial to the safety or interest of the State and hence Section 3 of the Act of 1923 will not apply to this case and in that case maximum punishment would be 3 years and not 14 years.

v. Mr. S.V. Manohar, learned Senior Advocate argued that the applicant is in jail from last 3 years 8 months and if the

applicant is convicted under Section 5 of the Act of 1923 and not under Section 3 of the Act of 1923 the maximum punishment would be three years. He, therefore, submits that as the applicant is in jail for substantive period, considering the maximum punishment even under Section 3, he is entitled for grant of bail.

vi. Mr. S.V. Manohar, learned Senior Advocate further argued that in deciding bail applications the important factor which should be taken into consideration by the Court is the delay in concluding the trial. He submits that if the accused is denied bail and ultimately he is acquitted, the important years of his life spent in custody cannot get back and therefore as the applicant is in jail for long period and there is no possibility that the trial will be concluded in near future, the applicant may be released on bail. For this purpose, he has placed reliance on the judgment of the Hon'ble Apex Court in the case of *State of Kerala vs Raneef*.

vii. Mr. S.V. Manohar, learned Senior Advocate for the applicant has drawn attention to the case details of the sessions trial which show that even the charge is not framed, so far. Thus, he submits that considering the pace of the trial with which the trial is proceeding, it will take long time to conclude and it is prejudicial to the rights of the applicant guaranteed under Article 21 of the Constitution of India.

viii. He submits that, the Hon'ble Supreme Court of India, in the matter of *Union of India vs K.A. Najeeb*.² under Unlawful Activities (Prevention) Act, has observed that the under trials cannot indefinitely be detained pending trial and no person ought to suffer adverse consequences of his acts unless the same is established before the neutral arbiter.

ix. On the other hand, Mr. V.A. Thakare, learned APP strongly opposed the application and submits that whether there was any intention prejudicial to the safety and interest of the State or not, is the matter of trial and at this stage relevant consideration will be whether there is prima facie material available against the applicant.

x. Mr. Thakare, learned APP has taken to this Court through the relevant documents filed along with the chargesheet and submits that, prima facie, incriminating material is available against the applicant and considering the seriousness of the offence which is related to the safety of the State, he submits that this Court may not grant the prayer for grant of bail.

xi. It is submitted that the important secrets and sensitive classified information which was available with the applicant in his electronic devices i.e. in the laptop and hard disk was transferred in the hands of the foreign countries and antisocial elements.

xii. He submits that the applicant is a scientist and he was knowing very well the consequences of installation of software.

xiii. He further submits that there are allegations of copying the secrets and sensitive classified information by the applicant, which has also been transferred to the foreign countries. He, therefore, submits that this Court at this stage cannot go into the aspect, whether Section 3 of the Act of 1923 applies or not, unless the evidence is led.

xiv. The learned APP has placed reliance on the judgments of the Hon'ble Supreme Court of India in the case of *Gobarbhai Naranbhai Singala vs State of Gujarat and others*³ and *State of Bihar and another vs Amit Kumar alias Bachcha Rai*⁴, in support of his submissions.

xv. I have perused the chargesheet, First Information Report (FIR) and the reply of the State.

From the chargesheet, it can be seen that during the course of investigation and examination of the personal hard disk and laptop of the applicant, it was found that the secret and restricted record and files were on the laptop of the applicant. There were 19 such files in the laptop of the applicant. It was also

3(2008) 3 SCC 775

4(2017) 13 SCC 751

found that the applicant installed a software because of which the important secret and sensitive classified information which was available with the applicant's electronic device, was transferred to the foreign countries and antisocial elements. Prima facie, it appears that 4,47,734 cache files have been leaked from the laptop and hard disk of the present applicant. Thus, the allegations against the applicant are that he has leaked the secret and sensitive documents. Accordingly, the offence came to be registered against the applicant.

xvi. In reply of the prosecution, at some places it is mentioned that it was a sort of honey trap and Cyber activities by giving allurements to the officers to trap them in illegal espionage activity. However, at this stage, merely on the basis of such statement, it cannot be concluded that there was or there was no intention of the applicant, prejudicial to the safety and interest of the State, since it is a matter of trial. Hence, this Court at this stage refrain from making any comment on the applicability of Section 3 of the Act of 1923. In the circumstances, I am not inclined to grant bail to the applicant.

xvii. However, I am of the considered view that certain directions in respect of conclusion of trial is necessary in this case. The applicant is in jail since last 3 years and 8 months and there is no progress in trial. The maximum punishment under Section 5 of the Act of 1923 is three years whereas, under Section 3 it is 14

years. If the trial Court after conclusion of trial holds that Section 3 is not applicable, but Section 5 applies, the maximum punishment will be three years.

xviii. In the circumstances, because, there is an uncertainty about the time period within which the trial will be concluded, I pass the following order:-

ORDER

- a) Application is rejected.
- b) The trial Court is requested to expedite the trial and conclude the same in next six months from the date of filing of certified copy of this order.
- c) Liberty is granted to the applicant to move a fresh application before this Court in case there will be no substantive progress in trial, in next six months.
- d) The applicant shall cooperate in trial.
- e) He shall not pressurize the prosecution witnesses or tamper with the prosecution evidence.
- f) Accordingly, the application is disposed of.

- g) As the Bail Application is disposed of, all the other applications have become infructuous and the same are disposed of.

(Anil S. Kilor, J.)