

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

CRIMINAL APPLICATION (BA) NO. 901 OF 2022

Shri Pralhad @ Pratap s/o Tanbaji Pawar **Versus** State of Maharashtra, through
Officer Incharge Bhandara City Tq. and District Bhandara

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri H.D.Dangre, counsel for the applicant.

Shri V.A.Thakre, A.P.P. for the non-applicant/State.

CORAM : ANIL S. KILOR, J.
DATED : 20/08/2022

1. The applicant is seeking bail in connection with Crime No. 160 of 2015, registered with Police Station, Bhandara City, Dist. Bhandara, for the offences punishable under Sections 409, 418, 420, 466, 468, 471, 474, 120-B, 34 of the Indian Penal Code read with Sections 13(1)(c), 13(1)(d), 13(2) of the Prevention of Corruption Act, 1988.

2. Shri H.D.Dangre, learned counsel for the applicant submits that applicant is in jail since 03/02/2016 i.e. from last six years and considering the maximum punishment, the applicant has already undergone the substantive incarceration.

3. It is submitted that, the applicant has been falsely implicated in the alleged offence and considering the material collected by the Investigating Officer during the investigation, there are less chances of being convicted. Accordingly, he prays for grant of bail.

4. On the other hand, learned APP strongly opposed the present application and submits that in view of the incriminating material against the applicant, this Court may not grant bail to the applicant.

5. It is further submitted that, the earlier bail application was withdrawn and in absence of any change in circumstances, this Court may not entertained the present application.

6. Shri H.D.Dangre, learned counsel for the applicant in reply submits that, this Court while disposing of the application of the applicant vide order dated 08/08/2019, granted liberty to the applicant that in case, the trial is not concluded within six months, a fresh application can revive his prayer for grant of bail.

7. I have perused the charge-sheet and the FIR.

8. This Court, while disposing the application for grant of bail filed by the applicant vide order dated 08/08/2019 has specifically observed that, in case the trial is not concluded within six months, the applicant is at liberty to revive his prayer for grant of bail. Though thereafter the period of three years is lapsed, till date the trial is not concluded.

9. In the above referred backdrop, if the date of arrest of the applicant is consider i.e. 03/02/2016, it can be seen that, the applicant is in jail for about six and half years. Thus, he has already undergone substantive period of

incarceration. The Hon'ble Supreme Court of India in the case of *Union of India Vs. K.A. Najeeb*¹, has observed thus:

“15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

17. It is thus clear to us that the presence of statutory restrictions like Section 43D (5) of UAPA perse does not oust the ability of the Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional

1 (2021) 3 SCC 713

Jurisdiction can be well harmonised. Whereas at commencement of proceedings, the Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43D (5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

10. Thus, in the light of the above observations made by the *Union of India Vs. K.A. Najeed (supra)*, I am of the opinion that, the applicant has already undergone the substantive period of incarceration, hence, he is entitled for grant of bail. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that in connection with Crime No. 160/2015, registered with Police Station, Bhandara City, Dist. Bhandara, for the offences punishable under Sections 409, 418, 420, 466, 468, 471, 474, 120-B, 34 of the Indian Penal Code read with Sections 13(1)(c), 13(1)(d), 13(2) of the Prevention of Corruption Act, 1988, the applicant shall be released on bail on

furnishing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.

- c) The applicant shall attend the Police Station as and when his presence is required.
- d) The applicant shall not tamper with the prosecution witnesses.

The criminal application is **disposed of**, accordingly.

[ANIL S. KILOR, J.]