

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

CRIMINAL APPLICATION (BA) NO.1114 OF 2022

(YOGESH MAROTRAO REHAPADE AND ANOTHER
....VS..

STATE OF MAHARASHTRA THROUGH PSO PS BUTIBORI, NAGPUR (GRAMIN))

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.K.Bhandarkar, Advocate for Applicants.
Shri S.D.Sirpurkar, A.P.P. for Non-applicant/State.

CORAM : ANIL S. KILOR, J.

DATED : 26th SEPTEMBER, 2022.

1. Heard.

2. By this application under Section 439 of the Code of Criminal Procedure the applicants are seeking bail in Crime No.193 of 2019, registered with Police Station, Butibori, District: Nagpur (Rural) for the offences punishable under Sections 406, 409, 420, 120-B of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

3. The learned counsel for the applicants submits that the applicants are in jail from last 3½ years and there is no progress in trial. It is submitted that there is no possibility that in near future the trial will commence. He further states that looking to the voluminous charge-sheet and the number of

witnesses, there is no likelihood that the trial will conclude in near future. He, therefore, submits that keeping the applicants in jail for uncertain period would amount to pre-trial punishment. For this purpose, he is relying upon the judgment of the Hon'ble Supreme Court of India in the case of *Union of India ..vs.. K.A.Najeeb*, reported in (2021) 3 SCC 713.

4. On the other hand, the learned A.P.P. is not disputing that the trial has not yet commenced. He further submits that there are criminal antecedents of similar nature to the discredit of the applicants. He, therefore, submits that there is every likelihood that if the applicants are released on bail, either they may not be available for trial or they may commit the similar offence. He, therefore, opposes the present application and prays for rejection of the same.

5. I have perused the charge-sheet and the application.

6. From the F.I.R., it can be seen that it was registered on 16/03/2019. The period of occurrence of the offence is from 12/01/2013 to 28/10/2018. Thus, there was delay in lodgment of the F.I.R.

7. While withdrawing the first bail application, on showing disinclination by this Court to grant bail, liberty was granted to the applicants to file a fresh application after three months if there is no progress in the trial. The said order was passed by this Court on 07/10/2021 and till date there is no progress in the trial even after lapse of about 11 months.

8. Considering the volume of the charge-sheet and that the total witnesses are 106, there is no possibility that in near future the trial will commence or it will be concluded.

9. The learned counsel for the applicants has argued that there is a doubt whether Section 409 of the Indian Penal Code would apply to the applicants, considering the fact that he is neither a public servant nor banker or merchant or agent.

10. Considering the said submissions, if Section 409 of the IPC would be held to be not attracted against the applicants in this case, at the most, the applicants would be guilty under Section 420 of the

IPC and the maximum punishment in that case would be seven years. The applicants have undergone incarceration for 3½ years. Thus, it can be said that they have undergone substantive incarceration.

11. In the case of *Union of India ..vs.. K.A. Najeeb*, (supra) the Hon'ble Supreme Court of India, has held 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/s 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 43-D(5) of UAPA per se 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 statute as well as the powers exercisable under constitutional 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 43-D(5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

12. In the light of the above referred observations and considering the fact that the applicants have already undergone substantive incarceration, I am of the opinion that the applicants are entitled for grant of bail. As far as antecedents are concerned, those are arising out of the same transaction. Thus, in view of the above referred observations, I am of the opinion that the antecedents will not make the applicants disentitled for grant of bail.

13. The apprehension expressed by the learned A.P.P. that if the applicants are released on bail they may pressurize the prosecution witnesses or tamper the prosecution evidence and further they may not be available for trial, can be addressed by imposing certain stringent conditions. Accordingly, I pass the following order:

- i) Criminal application is allowed;
- ii) It is directed that the applicants shall be released on bail in Crime No.193 of 2019,

registered with Police Station, Butibori, District: Nagpur (Rural) for the offences punishable under Sections 406, 409, 420, 120-B of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, on furnishing P.R.Bond of Rupees Fifty Thousand each with one solvent surety each in the like amount;

- iii) The applicants shall attend the concerned Police Station on 1st and 16th day of every month, till culmination of trial.
- iv) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;
- v) Liberty is granted to the State for cancellation of bail if the applicants commits similar offence.
- vi) The applicants shall attend the trial before the Special Court regularly on every date unless exemption is granted by the Special Court.

The Criminal Application is **disposed of** accordingly.

Digitally signed
by
SACHINDANAND
K NAIR
Date: 2022.09.27
16:45:13 +0530

JUDGE