

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.952 OF 2023

KIRAN BANDU KALE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Satish A. Gaikwad
APP for Respondent : Mr. S. B. Narwade
...

CORAM : S. G. MEHARE, J.

DATE : 27-07-2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent/State.
2. The applicant is seeking in C.R.No.I-107 of 2018 registered with Kopargaon Taluka Police Station, Kopargaon, for the offences punishable under Sections 395, 396, 397, 120B, 75, 412, 414 of the Indian Penal Code and Sections 3/25, 7, 4/25 of the Arms Act read with Sections 3(1)(i)(ii), 3(2), 3(4) of the the Maharashtra Control of Organized Crime Act, 1999.
3. The applicant has been arrested on 06.09.2018. Since then, he has been incarcerated in the jail without any progress in the trial.
4. The learned counsel for the applicant referred to the various judgments on long incarceration in jail and vehemently argued

that there is absolutely no progress in the trial and there are no chances of concluding the trial in near future. In view of the judgment of the Hon'ble Supreme Court in ***Maulana Mohammed Amir Rashadi vs. State of U.P. and another, 2012 (2) Mh.L.J. (Cri.) 412*** antecedents to his discredit would be a hurdle in granting him bail. It has also argued that in view of the judgment of the Bombay High Court in a case of ***Ashutosh Ashok Butte-Patil versus The State of Maharashtra***, passed in ***Criminal Bail Application No.312 of 2021, dated 19.10.2022***, the embargo under the Special acts shall not be an impediment in granting bail to the accused on the ground of incarceration of accused in custody for a long time. He has also referred to the other judgments on similar facts and prayed to grant bail.

5. The learned A.P.P. for the State has strongly opposed the application. He would contend that the applicant was a convict in one case and other eight cases are pending against him. He would submit that the offence is serious. The applicant is history-sheeter. Therefore, he cannot claim bail only on the ground of long incarceration. Considering the role attributed to the applicant, his antecedents may be considered. Hence, he prayed to reject the application.

6. It is not in dispute that the applicant is languishing in jail since 06.09.2018 without progress in the trial. He did not

approach the Court for bail. Law is settled by various pronouncements of the Hon'ble Supreme Court and High Courts that the accused be granted bail if he is languishing in jail for a long period without hope of concluding the trial in near future. The protection under Article 21 of the Constitution has been given to such accused.

7. The Bombay High Court has discussed various laws on issue before this Court in a case of **Ashutosh Ashok Butte-Patil** (*supra*). It has been clearly observed in the said judgment that the embargo under the Special Acts shall not be an impediment in granting bail by the Court on incarceration in custody for a long time more particularly in the light of various decisions of the Hon'ble Supreme Court.

8. Relying on the said judgment and various other judgments relevant to the facts in issue, this Court recently granted bail to the co-accused Vikram Rajnikant Bhosale on 21.04.2023 by order in B.A.No.454 of 2023. The ratio laid down in the case of **Shaheen Welfare Association vs Union of India and others, (1996) 2 SCC 616**, is also squarely applicable to the case at hand. The prosecution has nothing to satisfy the Court in the near future, the trial is likely to be open and concluded. It is not in dispute that since the day of his arrest and filing the chargesheet, there is absolutely no progress in the trial. In view of the law laid

down by the Hon'ble Supreme Court as regards the incarceration for a long period, the Court is of the view that the applicant deserves bail. Hence, the order:-

- i) The application is allowed.
- ii) Applicant Kiran Bandu Kale be released on bail, on furnishing PB and SB of Rs.1,00,000/- with one or two solvent sureties of the amount of Rs.50,000/- each, in C.R.No.I-107 of 2018 registered with Kopargaon Taluka Police Station, Kopargaon, for the offences punishable under Sections 395, 396, 397, 120B, 75, 412, 414 of the Indian Penal Code and Sections 3/25, 7, 4/25 of the Arms Act read with Sections 3(1)(i)(ii), 3(2), 3(4) of the the Maharashtra Control of Organized Crime Act, 1999, on the conditions that;
 - (a) He shall not tamper with the prosecution witnesses.
 - (b) He shall attend the trial on each effective date without justifiable reason.
 - (c) He shall attend the police station on every first Monday, after every three months between 12 noon to 3.00 p.m. till conclusion of trial.
 - (d) He shall not leave place of his residence without permission of the concerned police station.
 - (e) He shall furnish his cell phone number and permanent address to the police before releasing on bail.
 - (f) He shall not indulge in the similar crime.

(S. G. MEHARE)
JUDGE