

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.973 OF 2023

1) VINOD GANESH MARSALE
2) SAGAR GANESH MARSALE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. H. F. Pawar
APP for Respondent : Mr. S. B. Narwade

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CORAM : S. G. MEHARE, J.

DATE : 14.07.2023

PER COURT :

1. Heard the learned counsel for the applicants and the learned A.P.P. for the respondent/State.
2. The applicants are seeking bail in Crime No. 88 of 2018, registered with Chalisgaon Road Police Station, Dhule, for the offences punishable under Sections 307, 392, 120-B r/w 34 of the Indian Penal Code and Sections 3/25 of the Arms Act and 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act (for short, "MCOC Act").
3. The applicants are claiming bail since there is no effective progress in the trial. They have been languishing in jail since 3rd August 2018. The learned counsel for the applicants would submit that

by a catena of judgments of the Hon'ble Supreme Court, has taken the view that liberty guaranteed by Part III of the Constitution of India would cover within its protective ambit not only due procedure and fairness but also access to justice and a speed trial. He has relied on the case of *Union of India Versus K.A. Najeeb, (2021) 3 Supreme Court Cases 713 : 2021 S.C.C. OnLine SC 50*. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) Vs. Union of India, it was held that

“Under trials 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 Court would ordinarily be obligated to enlarge them on bail. However, he relied on the Judgment of the Bombay High Court Principal seat passed in *Criminal Appeal No. 355 of 2021 Iqbal Ahmed Kabir Ahmed Versus The State of Maharashtra Pronounced on 13th August 2021* in the said case the Hon'ble Division Bench discussing the fact has observed in paragraph No.43 which reads thus:-

“43. Reverting to the facts of the case, as indicated above, the recording of evidence is yet to commence. By any standard, it is very unlikely that the trial would be concluded in a reasonable period. We have adverted to the nature of the material/evidence which, according to the prosecution, incriminates the accused and our prima facie view thereon. The gravity of the charges against the appellant is required to be considered through the aforesaid prism. In any event, the appellant has already undergone the minimum term of imprisonment prescribed for the offences punishable under sections 16, 18 and 18B. Undoubtedly, the maximum sentence for these offences may extend to life imprisonment, like the offence punishable under section 20. The offences punishable under sections 38 and 39, and 13 entail maximum punishment of 10 years and 7 years, respectively. Evidently, the appellant has undergone more than half of the maximum punishment prescribed for the offences, other than the offences which entail imprisonment for life. In the later cases also, imprisonment can be from five years (where minimum is prescribed) to life.

4. Relying upon the above case, learned A.P.P. has raised the objection that the maximum punishment for the offence punishable under Section 307 of I.P.C. is life imprisonment. Hence, the applicants cannot claim bail as they have not suffered half of the life

imprisonment. However, the position has been clarified in paragraph 44 of the said order, which reads thus:

44. In the aforesaid view of the matter, in our considered opinion, the further incarceration of the appellant, in the face of extremely unlikely situation of the trial being completed in near future, would be in negation of the protection of life and personal liberty under Article 21. The denial of bail, in such circumstances, would render the procedure not only unreasonable but unconscionable as well.”

5. The learned A.P.P. has raised the objection that the applicants have been arraigned as accused in Special Act that provides a specific bar under Section 21(4) to grant the bail; therefore, merely languishing in jail for a longer period would not entitle him to bail.

6. In reply, the learned counsel for the applicant referred to paragraph No. 25 from the case of **Ajit Bhagwan Tiwde Versus State of Maharashtra 2022 S.C.C. OnLine Bom 4079 : (2022) 1 A.I.R. Bom R (Cri) 772.** It has been observed that in paragraph No. 25, which reads thus;

“Although it is not necessary to go deep into the restrictions like Section 37 of NDPS Act, Section 20(8) of TADA Act and Section 21(4) of MCOC act, since the right to speedy trial is supreme, it is required to be

noted that above provisions carrying embargo for granting of bail under TADA Act, NDPS Act and MCOC Act are *pari materia*. It is true there is distinction in embargo for bail, *qua* UAPA act. However, that should not be hurdle in granting bail on the ground of infringement of Article 21 of Constitution of India. No decision has been brought to notice of the Court wherein bail has been refused by Supreme Court, in spite of accused being in prolonged custody on the basis of such restrictions. It is also pertinent to note the extent to which such rigorous can be interpreted while granting bail.”

In paragraph No.26, this Court has specifically observed that;

“Thus, embargo under the provisions of Special Acts shall not be an impediment in grant of bail by this Court on the ground of incarceration of accused in custody for a long time. More particularly in the light of various decision of Supreme Court.”

7. However, the learned A.P.P. has again raised the objection that the trial was never expedited by this Court while rejecting the earlier bail application; therefore, the ratio laid down in the case of *Ajit Bhagwan Tiwde Vs. State of Maharashtra* cited (*supra*) would not apply. He prayed that one more opportunity be granted to the trial Court to expedite the trial and decide the case in a specific period.

8. In reply, the learned counsel for the applicants has vehemently argued that the possibility of finishing trial within six months shall be examined. He would argue that there are around 35 witnesses cited in the list of witnesses. Some of them are higher police officers, and securing their presence is difficult. He would also argue that the Misc. Applications were also not decided in time. Six months were taken to decide on the bail application. The draft charges were furnished two years before the Court, but no charges were framed. Besides the above, applicants are languishing in the Nashik Jail, and they are often not produced before the Court. This case was transferred from District and Sessions Court Nashik to District and Sessions Court, Dhule, after constituting the Special (MCOC) Court. Therefore, concluding the trial within six months is practically impossible. It might be a futile attempt.

9. From the case laws relied upon by the learned counsel for the applicants, it is clear that incarceration of the accused for an indefinite period, even in cases like the MCOC Act, is a good ground for granting bail as it is a violation of Article 21 of the Constitution of India.

10. The progress report of this case was called. It has been placed on record. There is substance in the argument of the learned counsel for the applicant that the bail application took six months to decide. The

learned Special Public Prosecutor took around seven months to complete the argument on the application for bail, and his bail application was decided after around six months thereafter. Since there was no trial, the accused were filing bail applications. Two bail applications filed by the other co-accused are still pending. The judicial officer, most of the time, was on leave. The new judicial officer took charge and listed the matter for deciding the bail application of the co-accused on 19th June 2023 for the order below Exh. 48 and 50 and hearing before the charge on 19.06.2023, the learned Presiding Officer was on commuted leave. Now the case is fixed for the order below Exhs. 48 and 50 and hearing on before charge on 03.07.2023. The report of the judicial officer itself is evidence to show that the trial is proceeding at snail's speed. Production of the accused by jail is the biggest challenge for many important stages. The physical presence of the accused is essential where their identification is needed. Besides, it was always the demand of the accused to produce them physically; however, every time, it was not possible, and thus, cases unnecessarily remained pending. The applicants have to produce to Dhule from Nashik. The distance between Dhule and Nashik is more than 180 Km.

11. The learned counsel for the applicants states that the application was made to the Dhule Court to transfer the accused to Dhule jail from

Nashik. However, it is still pending. The conduct of the accused indicates that the accused were keen to decide the matter at the earliest.

12. In view of the progress report, the case is at the very primary stage; therefore, it would not be desirable to direct the trial Court to expedite the trial within six months.

13. Considering the incarceration of the applicant for sufficient period, and ratio laid down by the Hon'ble Apex Court and Bombay High Court in the case cited (supra) this Court is of the view that the applicant deserves bail on certain conditions. Hence, the following order.

ORDER

- (i) The application is allowed.
- (ii) Applicant No.1 Vinod Ganesh Marsale and applicant No.2 Sagar Ganesh Marsale be released on bail, on furnishing P.B. and S.B. of Rs.1,00,000/- (Rs.One Lakh) each, with one solvent surety of the like amount, in Crime No.88/2018, registered with Chalisgaon Road Police Station, Dhule, for the offences punishable under Sections 307, 392, 120B read with Section 34 of the Indian Penal Code and under Sections 3/25 of Arms Act

and Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, on the conditions that,

- (a) They shall not tamper with the prosecution witnesses.
- (b) The applicants should not threaten the prosecution witnesses.
- (c) They shall attend the concerned police station once a week i.e. every Wednesday between 4.00 p.m. to 6.00 p.m. till the conclusion of the trial.
- (d) They shall not leave the place of their residence without the permission of the police station Manmmad in whose jurisdiction they reside.
- (e) They shall furnish their cell phone numbers with an undertaking that they shall not change them till the conclusion of the trial.
- (f) They shall not contact the other co-accused in any way or mode till the conclusion of the trial.
- (g) They shall not contact the co-accused except his brother.
- (h) The applicant shall attend the trial on each and every effective date.
- (i) They shall not involve in any crime. If they indulge in any crime, the prosecution has the liberty to file an application for cancellation of bail.

(S. G. MEHARE)
JUDGE

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