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

BAIL APPLICATION NO.1802 OF 2022

**SAYED TAMKIN @ TAMMA S/O. SAYED MATIN
VERSUS
THE STATE OF MAHARASHTRA**

Mr. Nilesh S. Ghankar, Advocate for applicant;
Mr. S. P. Deshmukh, A.P.P. for respondent

CORAM : S. G. MEHARE, J.

DATE : 9th JANUARY, 2023

PC.

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent.
2. By this application under Section 439 of the Code of Criminal Procedure, the applicant seeks bail in C.R. No.I-21/2012, registered with Begumpura Police Station, Aurangabad for offences punishable under Sections 302, 364, 201, 120-B of the Indian Penal Code and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crimes Act, 1999.
3. No doubt, the applicant is languishing in jail since 2012. It appears that around 20 witnesses have been examined and the examination-in-chief of the last witness has been deferred. There are around eight accused. They have appointed different lawyers.

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4. The recent progress report of the learned District Judge-2, Aurangabad reveals that every time each of the accused had different demands. Accused no.5 refused to appear on video conference. The advocates representing the accused used to remain absent. On the date of the evidence, the accused were taken to the hospital for medical treatment. It appears that due to absence of a few learned counsel representing the accused, the matter could not be progressed. The learned Judge also submitted that the accused have filed an application before this Court for transferring the case to any other Court. However, it was withdrawn on 01.04.2022 since this Court expressed disinclination to transfer the trial. This Court had directed the learned Trial Court to complete the trial in given time; however, by order dated 29.03.2022 re-called the said order 23.06.2021. The other connected matters are also pending against the other accused.

5. In sum and substance, the applicant is seeking bail on the ground that there is no progress in the trial. Sole evidence against him is the panchnama under Section 27 of the Evidence Act, which is inadmissible. Except this, there is nothing against the applicant. The learned counsel would submit that the applicant never made any complaint against Court and he has filed a pursoris to proceed with the trial.

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6. Learned A.P.P. would submit that every endeavour was made to dispose of the case at the earliest, but as per the record, there was total non-cooperation of the accused. This may be a trick to secure bail. Under the circumstances, though the applicant is behind bar since 2012, the benefit of languishing in jail for a long period cannot be granted. That apart, the applicant has a bad past. He is a member of the organized crime. Serious offences have been committed. These circumstances may be considered while dealing with the present application.

7. The entire scenario of the case reveals that as this Court had directed to decide the matter in a given time, the Trial Court made every endeavour to dispose of case at the earliest. The Trial Court would not be able to dispose of the trial expeditiously, unless and until the accused, their advocates and the prosecution support the Court. It is a team work. However, it has been experienced in many cases that bearing in mind the law developed regarding bail, the accused who are habitual to face the trial, play tactics to protract the trials to create a ground for bail. The report of the learned Trial Court reveals that most of the time, either the accused were raising the objection or the advocates for some of the accused used to remain absent. The conduct of the Advocate defending the accused is also not appreciable. Any directions issued by the Higher Court is binding

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on every person involved in the matter. The direction issued to expedite the trial was expected to be honoured by the counsel appearing for the accused, but unfortunately it does not seem to happen. On the contrary, for every opportunity, the accused are brought to the Higher Courts for the reliefs. Be that as it may, bail is a right, but it must be supported with sound and reasonable grounds. Such ground should be natural and must not be created. That apart, conduct is one of the aspects that may be considered in considering the bail application.

8. The overall facts of the case reveal that the trial Court cannot be blamed at all for not deciding the case in time. The record reveals that every endeavour has been made by the learned trial Court to decide the matter. If there was delay on the part of the Court, that may be a different situation, but normally the Courts are not seen interested to protract the trial. The undertrial prisoners are given priority. Video conference is the alternate method to secure the presence of the accused, as there used to be a less manpower with police. Unfortunately, this method seems to have not been accepted by all persons except the Court. In many cases, it has been experienced that whenever the Court asked the accused to produce on video conference, they used to raise a strong objection and their advocate

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also does not co-operate with the Court to have presence of the accused on video conference.

9. In the present case, the learned counsel for the applicant has argued that there was a question of identification of the accused, since there were more accused, they could not be identified through video conference. This argument appears no force. The technology has developed to such an extent, that at a time many persons may join on one video conference. They may be produced simultaneously one by one or camera may be adjusted. Be that as it may, the Court is of the view that the ground on which the applicant is seeking bail, may be created with the help of other co-accused. All the accused are bound to support each other as they are the members of the organized crime. In any case, playing tactics with the Court should not be allowed and a wrong message should not go to the society.

10. For the reasons stated above, the Court is of the view that the applicant does not deserve bail. Hence, the application stands dismissed.

(S. G. MEHARE, J.)

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