



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 31 OF 2022

Mohammad Maqbool Mukta Bhat

... Applicant

V/s.

The State Of Maharashtra

... Respondent

Mr. Anil Lalla i/b Lalla & Lalla for Applicant.

Mr. J. P. Yagnik, APP for Respondent-State.

CORAM : A.S. GADKARI, J.

DATE : 21st SEPTEMBER 2023.

PC. :

1) This is a successive Application for bail under Section 439 of the Cr.PC., by the Applicant.

The earlier Application i.e. Criminal Bail Application No. 2398 of 2018 preferred by the Applicant was dismissed as withdrawn by Order dated 8th April, 2019. By the said Order, liberty was granted to the Applicant to file a fresh Application before the trial Court if the trial of Special (NDPS) Case No. 56 of 2018 pending on the file of Additional Sessions Judge and Special Judge (NDPS), Thane, does not commence within a period of one year from the date of passing of said Order.

2) Mr. Lalla, learned counsel for Applicant submitted that, though the said trial has commenced and the evidence of PW-1 has been partly recorded, in last two years prosecution has not taken any steps to further

record evidence of PW-1 and other witnesses. Applicant is in incarceration for more than five years and seven months at pre-trial stage. He therefore prayed that, Applicant may be released on bail.

3) As far as delay in conducting the trial is concerned, taking into consideration the aforesaid submissions made by Mr. Lalla, this Court on 31st August, 2023 had directed the Additional Commissioner of Police, Anti Extortion Cell, Crime Branch, Thane, to file an Affidavit placing on record the reasons for delay in concluding the said trial. Accordingly Dr. Panjabrao V. Ugale, Additional Commissioner of Police (Crime), Thane City has filed Affidavit dated 20th September, 2023. The Additional Commissioner of Police has briefly narrated the facts for delay in trial. In para No.8 thereof, he has stated that, the said case is partly pending for evidence and also the cross-examination of first informant is yet to be completed and the statements of witnesses are yet to be recorded.

It is thus clear that, trial of Applicant is not concluded and he is in prolonged incarceration without trial.

4) The present Application is predominantly considered on the ground that, Applicant is in incarceration without trial for more than five years and seven months for the offences alleged against him under the provisions of NDPS Act.

5) After applying the principles enunciated by the Hon'ble Supreme Court in the case of *Union of India V/s. K. A. Najeeb reported in (2021) 3 SCC 713*, followed by this Court in the case of Anil Shankar Patil

V/s. The State of Maharashtra (Bail Application No.33 of 2022, dated 29th July, 2022), this Court is of the view that, the Applicant can be released on bail on the ground of prolonged incarceration without trial.

6) Hence, the following Order:-

- (i) Applicant be released on bail in C.R. No. II-37 of 2018 dated 1st March, 2018 registered with Mumbra Police Station, District Thane culminated into Special (NDPS) Case No. 56 of 2018 pending on the file of Additional Sessions Judge and Special Judge (NDPS), Thane, on his furnishing P.R. bond of Rs.1,00,000/- with one or more solvent local sureties from Mumbai or Thane districts to make up the said amount.
- (ii) Before the release of Applicant on bail, the trial Court shall get documents of surety/sureties verified from the concerned Authority and/or local Police Station expeditiously.
- (iii) After his release from jail and during the pendency of the trial, the Applicant is directed to attend Anti Narcotics Cell, Thane City on every first and third Monday of the month between 10.00 a.m. and 12.00 noon initially for a period of one year and thereafter on every first Monday of every month between 10.00 a.m. and 12.00 noon.

- (iv) As the Applicant is ordinary resident from the State of Jammu And Kashmir, before his actual release from jail, he is directed to provide the documents of his prospective residence where he intends to reside either in the city of Mumbai or in the District of Thane.
 - (v) After his release from jail, the Applicant shall attend all the dates before the Trial Court, unless exempted by the concerned Court on medical grounds.
 - (vi) Applicant shall provide his mobile and/or landline number, if any, to the concerned Authority/Police Station.
 - (vii) In case of any two consecutive defaults in marking presency as per the direction in clause Nos.(iii) and/or (v), in that event, the State will be at liberty to file an Application for cancellation of bail of Applicant.
 - (viii) The Applicant shall not tamper with the evidence and/or pressurize the prosecution witnesses.
- 6) Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)