IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.71 OF 2023

Prashant Mulya @ Annu .. Applicant
Versus
State of Maharashtra .. Respondent
…

Mr.Ghanshyam Upadhyay a/w Mr. Ankit Upadhyay i/b Law Juris for the applicant.
Mr.Y.M. Nakhwa, APP for the State.
Mr. Gajanan Rathod, ACP, Crime, Navi Mumbai.
Mr. Sanjay Reddy, PSI, Central Unit, Navi Mumbai.

CORAM: BHARATI DANGRE, J.
DATED : 1st NOVEMBER, 2023

P.C:-

1 The second bail application is filed, pursuant to the first being rejected on 10/03/2022, more than a year ago, recording that the involvement of the applicant in the organized crime syndicate can be discerned through the material in the charge-sheet.

2 The bail application now, filed for the second time, plead a ground of long incarceration, as the applicant is incarcerated for over 8 years, being arrested on 15/07/2015.

Learned counsel Mr. Ghanshyam Upadhyay, would request to look into the bail application, with this angle.

3 The applicant face a charge in C.R. No. I-196 of 2015, registered with the Nerul Police Station, Navi Mumbai

which invoked Section 384, 385, 386, 387 and 201 r/w 34 of the IPC and the relevant sections of the Arms Act as well as the Maharashtra Police Act. In the same C.R. subsequently Section 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (for short “the MCOCA”) is also added.

The prosecution case, which surface through the charge-sheet is based on a complaint filed by the complainant, that he met accused no.1 in one Tarbez’s Office, and asked if he had received any extortion call and he denied.

On 5/11/2014, the complainant received a call from an international number and the person identified him as Ravi Pujari, the wanted accused and he demanded a sum of Rs.2 Crores.

This call prompted the complainant to register a complaint with Navi Mumbai, Crime Branch and he was provided protection and CCTV cameras were installed at his residence and office. Thereafter, one Dastgir Nadaf, a friend of the complainant also received extortion calls, and he offered to help the complainant and called the co-accused and they spoke to the head of the gang Ravi Pujari on a conference call. The complainant met with Dastgir and requested him to sort out the matter, who then spoke to Haji and the extortion amount was brought down to Rs.75 lacs. Since there was no money available with the complainant, he offered to register 1 BHK flat in Panvel’s ongoing project, but somehow the deal could not be fructified and the complainant continued to receive the phone calls for extortion from the main accused.

As far as the present applicant is concerned, he is accused of making the complainant speak with Haji through his mobile phone, who demanded rest of the amount of Rs. 45 lacs, and he is accused of making phone calls to the complainant reminding him about the payments.

4 The charge-sheet has compiled the material, collected during investigation against the accused persons. The main accused Ravi Pujari is, however, absconding.

Reliance is placed by the learned APP on the statement compiled in the charge-sheet and also about the applicant being identified as Johny, who had projected himself to be Haji Bhai's aid. Further, the connect of the applicant as a member of the crime syndicate is sought to be established, by establishing the commonality since he is arraigned as an accused in two C.R. along with the gang leader Ravi Pujari, which has invoked Section 385, 387 of IPC.

The learned APP would submit that the applicant belong to a gang headed by Ravi Pujari and along with it's members, it has created a reign of terror within the areas falling within the jurisdiction of Mumbai and Navi Mumbai and the gang leader Ravi Pujari, has committed various offences and various charge-sheets have been filed in the respective competent Courts, which have taken cognizance of the offences.

The present applicant is alleged to be member of this gang and in the charge-sheet there is evidence to establish his association with the organized crime syndicate.

5 Appreciating the material in the charge-sheet, on 10/03/2022, I had rejected the bail application filed by the applicant, but as on today, the situation of the trial which is informed to me is, that till date even the charge has not been framed.

The learned APP make a feeble attempt to explain that, since one of the accused Nadeem Kazi had filed an application under Section 227 of Cr.P.C seeking his discharge on 14/11/2019, and since the matter was kept pending till 12/07/2023, the charge could not be framed. Now, it is informed that the matter is fixed on 6/11/2023 and it is projected before me due to pendency of the discharge application, the charge could not be framed.

The above explanation definitely cut a sorry state of affairs, as for last 8 years, the applicant is behind bar but till date, even the charge is not framed and with almost 15 to 20 witnesses cited by the prosecution, to be examined the applicant is deprived of his right of speedy trial, and there is undue delay in conduct of the trial. Detention or incarceration, before being pronounced guilty of an offence should not become a punishment, and in case, if the trial gets protracted and not culminated in a speculated timeline, the prayer for bail may deserve consideration.

6 Recently the Hon’ble Apex Court in case of *Manish Sisodia vs Central Bureau of Investigation in (Special Leave Petition (Criminal) No. 8167 of 2023)* has observed as under:-

> *"29. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnapping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant ball. This would be truer where the trial would take years."*

7 Right of a fair and speedy trial has been well recognized as a facet of Article 21 and the liberty guaranteed by Part III of the Constitution, would cover within it's protective ambit not only due procedure and fairness, but also access to justice and speedy trial, and undergoing imprisonment without having been held guilty runs counter to the concept of civilized society, which would expect a person to be sentenced only upon being found guilty. 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 him on bail.

Needless to state that the seriousness of the charges to be faced in trial has to be balanced with the period of custody suffered and when it is to be *juxtaposed* against the period which cannot be fixed with certainty, the discretion vested in the Court in securing release of an accused becomes imperative.

In any case, the purpose of grant of bail is to secure the appearance of the person at the trial and deprivation of liberty, prior to conviction is a great hardship and should be only resorted to if the release on bail is likely to prejudice the trial.

No such situation is apprehended by the prosecution and hence, I deem it appropriate to release the applicant on bail by imposing stringent conditions upon him, which shall also secure his presence at the trial.

Hence the following Order:

: **<u>ORDER</u>** :

(a) Application is allowed.

(b) Applicant - Prashant Mulya @ Annu, shall be released on bail in connection with C.R.No.I-196 of 2015 registered with Nerul Police Station on furnishing P.R. Bond to the extent of Rs.50,000/- with one or more sureties in the like amount.

(c) The applicant shall mark his attendance on first Monday of every month between 3:00 p.m to 5:00 p.m to the Nerul Police Station till framing of charge.

(d) The applicant shall in case he posses a passport, surrender the same with the Investigating Officer on his first date of reporting.

(e) The applicant shall provide his current address, telephone number, place of residence and intimate about the change if any, to the concerned Investigating Officer.

(f) The applicant shall not leave State of Maharashtra without prior permission of the Special Judge.

(g) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(SMT. BHARATI DANGRE, J.)