

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.985 OF 2022

Kiran Nirgun Bodke] .. Applicant
vs.
State of Maharashtra] .. Respondent

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Mr.Ashok Mundargi, Senior Counsel, h/f Rohan Hogle for the Applicant.
Ms.P.N. Dabholkar, APP for the State.

CORAM : BHARATI DANGRE, J

DATE : 27th April, 2023.

P.C.

1] On 26.07.2021, on examining the material compiled in the charge-sheet, which charged the accused in CR No.600/2019, under Section 302, 143, 147, 149 of the Indian Penal Code, I refused to entertain the Application. Upon such disinclination being expressed, the learned counsel for the Applicant had withdrawn the Application.

2] This is the second time, when the Applicant has again knocked the doors of this Court and the learned senior counsel Mr.Mundargi would fairly concede to the fact that the Court had considered the merits of the Bail Application and weighing the most relevant factor, the gravity of the accusations, expressed its disinclination to release him on bail. The learned senior Counsel Mr. Mundargi, by placing on record the order sheet of Sessions Case No.1035/2019 would submit that there is no progress at all in the case and it is almost four years, but even the charge has not been framed.

3] The charge-sheet placed on record reveal that the prosecution has cited 44 witnesses and one can just speculate the time which would be consumed in concluding the trial. When the order sheet placed before me is perused and particularly after the period of lock down, it is noticed that, from 03.02.2021, at least 41 times the matter is fixed for framing charge, but the accused is not produced.

4] It is shocking to note that, a person who is incarcerated as under-trial, is not produced before the Court, despite listing of case before the Court on almost 40-50 occasions. The offence against the Applicant is of committing murder and prima-faice the charge-sheet has compiled material against him, which may preferably sufficient enough to indict him for the charge. However, the question that arise for consideration is that how long shall we keep the accused incarcerated as under-trial prisoner.

5] In the case of ***Union of India vs. K.A. Najeed, (2021)3 SSC 713***, the relevant observations of their Lordship read thus :

“15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial f Prisoners) v. Union of India¹⁵, it was held that undertrials 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 courts would ordinarily be obligated to enlarge them on bail.”

It may be true that the charges levelled against the Appellant are grave and the prosecution may be able to secure his conviction for

committing such a grave offence, however, since down the line for years from his arrest, the charge is yet to be framed with 44-45 witnesses being cited by the prosecution, he deserve his freedom since the trial has not yet commenced.

While striking balance between the gravity of accusation and right to a fair trial, it is necessary to give importance to the liberty available to every citizen by Article 21 and though he may undergo trial and face conviction on its conclusion, but he cannot be indefinitely kept incarcerated awaiting the trial.

6] As stated above, on earlier occasion I had rejected the application on merits, on the second count accepting that the Applicant is facing serious charge of murder and there is sufficient evidence, I deem it appropriate to secure him his liberty only on the ground of abnormal delay in framing of the charge.

With almost 42-44 witnesses to be examined, one cannot speculate how much further time the trial would take for its conclusion. But till date, it would be traversity of justice keeping him further incarcerated. He may undergo sentence on being convicted by the competent Court and appropriate penalty may be imposed upon him, but pending the trial he deserve liberty.

Though I am inclined to release him on bail, I deem it appropriate to impose strict condition of he not entering the jurisdiction of Pune city till the trial commences, except for marking his attendance in Talegaon Dabhade Police Station and for attending the dates of trial He shall not in any way influence the prosecution witnesses and if any such incident is reported, the prosecution would be at liberty to request for curtailing the liberty.

Hence, following order :

ORDER

- (a) Application is allowed.
- (b) Applicant – Kiran Nirgun Bodke shall be released on bail in connection with Sessions Case No.1035/2019, registered at Talegaon Dabhade Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The applicant shall report to the concerned Police Station on first Saturday of every month between 2.00 p.m. to 5.00 p.m.
- (d) The Applicant shall regularly attend trial, on every date, unless exempted.
- (e) The Applicant shall not enter the jurisdiction of Pune city till the trial commences, except for marking his attendance in Talegaon Dabhade Police Station, as directed above, and for attending the trial Court, if directed.
- (f) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

[BHARATI DANGRE, J]