

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1680 OF 2023

Nilesh Shriniwas Baswant

Applicant

versus

The State of Maharashtra

Respondent

Ms.Sana Raees Khan with Mr.Aditya Parmar and Tejas Puekar,
Advocate for Applicant.

Mrs.Anamika Malhotra, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 20th July 2023

PC :

1. This is second application for bail. The previous application was rejected by this Court on merits by order dated 30th October 2020.

2. Applicant is arrested in connection with C.R No.477 of 2015 registered with Kondhwa Police Station, Pune for the offences under Sections 307, 387, 447, 504, 506(2) r/w 34 of Indian Penal Code. Subsequently Sections 3(1)(ii), 3(2), 3(5) and 4 of Maharashtra Control of Organized Crimes Act were invoked.

3. Learned advocate for Applicant submitted that Applicant is in custody from 5th August 2016. Although evidence of the prosecution witnesses is concluded, about 71 witnesses have turned hostile. Evidence of complainant does not involve applicant. There are nine accused in this case. Even for recording statement of accused u/s.313 of Cr.PC substantial time will be required. This Court vide order dated 23rd January 2023 passed in Bail Application No.4168 of 2021 preferred by co-accused Deepak Kadam had directed that Trial

Court should conclude the Trial as early as possible and if it is not concluded within three months from the date of receipt of order, the said accused was granted liberty to prefer application for bail. Even prior to that directions to expedite passed by this Court vide orders dated 30th September 2021 and 27th November 2021, the Applicant cannot be kept in custody for indefinite period. Long incarceration affects rights of Applicant under Article 21 of Constitution of India. The Supreme Court has granted bail to the accused where evidence is over and statement u/s.313 of Cr.PC was to be recorded. Applicant is in custody for about seven years.

4. Advocate for Applicant has relied upon following decisions :

(i) Paras Ram Vishnoi Vs. The Director CBI, decided by Supreme Court in Criminal Appeal No.693/2021, dated 27-7-2021;

(ii) Chintan Vidyasagar Upadhyay Vs. The State of Maharashtra – decided by Supreme Court in Special Leave to Appeal (Cri) No.2543/2021, dated 17-9-2021;

(iii) Union of India Vs. K.A.Najeeb, decided by Supreme Court in Criminal Criminal Appeal No.98 of 2021, decided on 1-2-2021;

(iv) Ajit Bhagwan Tiwde Vs The State of Maharashtra decided by Bombay High Court in Bail Application No.995 of 2021, dated 19-1-2022;

(v) Musa Annu Sayyed Vs. the State of Maharashtra decided by Bombay High Court in Bail Application No.172 of 2021, dated 25-11-2022;

(vi) Laxman Tukaram Muthekar Vs. The State of Maharashtra decided by Bombay High Court in Bail Application No.887 of 2020, dated 6-4-2022.

5. Learned APP submitted that evidence of all the witnesses is recorded. Prosecution has examined about 80 witnesses. Submission of advocate for Applicant is that 71 witnesses have turned hostile. This would indicate that prosecution witnesses are under influence and deposed against prosecution. Since evidence of the witnesses is recorded, question of grant of bail to applicant at this stage does not arise. Accused are delaying trial by making applications. Even after trial is expedited by this Court, co-accused has made application for discharge. Hence, this application may be rejected.

6. Undisputedly previous application was rejected on merits. Present application is filed on the ground that Applicant is in custody from 5th August 2016. It is pertinent to note that trial had commenced and evidence of all the prosecution witnesses is recorded. Apparently case is now due for recording statement of accused u/s.313 of Cr.P.C. The decisions relied by learned advocate for Applicants are based on the facts in those respective cases.

7. Considering the circumstances, no case is made out for grant of bail. Bail Application is rejected.

(PRAKASH D. NAIK, J.)

MST