

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL BAIL APPLICATION NO. 2148 OF 2022**

Ramesh Nagnath Kadam

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr.Nitin Pradhan a/w. Ms. Shubhada Khot, Mr.Dhruv Balan & Ms.Tanvi T. for Applicant.

Mr.Mahesh Mule, Special P.P. a/w. Ms.Nidhi Narvekar, Mr.Ankit Takle, Mr.Aashish Shah, Mr.Ajay Bhise & Mr.S.S. Hulke, A.P.P. for Respondent-State.
I.O. Ms.Anuja Deshmane, Addl. S.P., State C.I.D., Pune.

CORAM : A. S. GADKARI, J.**RESERVED ON : 9th March 2023.****PRONOUNCED ON : 16th March 2023.****ORDER :**

1. This is a successive application for bail under Section 439 of Criminal Procedure Code (*for short, "Cr.PC."*) by the Applicant (A.No.5) in CR No. 336 of 2015 registered with Dahisar Police Station, Mumbai under Sections 406, 408, 409, 420, 465, 467, 468, 471, 384, 120-B read with Section 34 of The Indian Penal Code and Sections 7, 13(1)(c) & (d) of The Prevention of Corruption Act, 1988.

2. The first application preferred by Applicant bearing Bail Application No. 2463 of 2015 was dismissed by this Court by a reasoned Order dated 27th January 2016. The Applicant thereafter preferred Bail Application No. 505 of 2017 for temporary bail, to enable him to attend the

Budget Session of the Maharashtra Legislative Assembly. The said application was rejected by this Court by a speaking Order dated 27th March 2017. The third application preferred by the Applicant bearing Bail Application No. 2312 of 2018 was also rejected by this Court by a speaking Order dated 3rd December 2018. In these brief premise, present application is filed for bail.

3. Heard Mr.Nitin Pradhan, learned counsel for Applicant, Mr.Mahesh Mule, learned Special P.P for Respondent-State. Perused entire record produced before me and the Affidavit-in-Reply dated 28th January 2023 filed by the Additional S.P , C.I.D., Pune.

4. Mr.Pradhan, learned counsel for Applicant at the outset submitted that, he is not contesting the present application on merits, as this Court on 27th January 2016 has passed an Order on merits, rejecting the application for bail of the Applicant. That the other two successive applications for bail have also been decided by this Court on merits. However, by the present application, the Applicant seeks his release on bail only on the ground of prolonged incarceration without trial. He submitted that, the Applicant (A.No.5) in the present crime has been arrested on 17th August 2015 and since then for last about seven and half years he is in jail as an under-trial prisoner. That there are 27 accused persons in the present crime. That, except Applicant (A.No.5) and co-accused Rameshwar P Gadekar (A.No.16), rest all of the accused have been released on bail. That the co-accused namely Vijay R. Kasabe (A.No.1) has been directed to be

released on bail by the co-ordinate Bench by its Order dated 13th April 2022 mainly on the ground that, the said accused was in custody for about 7 years without trial and it was the reason to justify him to grant bail. He submitted that, there are about 350 witnesses in the present case and the likelihood of conclusion of trial within reasonable period of time is remote. He submitted that, the principles enumerated by the Hon'ble Supreme Court in the case of *Union of India Vs. K.A. Najeeb, reported in (2021) 3 SCC 713*, wherein it has been held that, when 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 on bail, regardless of statutory restrictions imposed on right to bail by the provisions like Section 43(D)(5) of The Unlawful Activities (Prevention) Act, 1967 (*for short, "UAPA"*). He submitted that, in the present case, except the provisions of Prevention of Corruption Act, which is a special statute and under which neither the sentence of life or death is prescribed, other alleged offences are under the I.P.C.. He therefore prayed that, the Applicant may be released on bail on such terms and conditions as this Court may prescribe by allowing present application.

5. Per contra, Mr.Mule, learned Special PP. for Respondent-State opposed the application and submitted that, the Applicant himself has preferred a Petition in this Court challenging the applicability of Section 13(1)(d) of the Prevention of Corruption Act and on his request this Court has stayed the trial of the Applicant in the present case. He submitted that, in

Order dated 3rd December 2018 passed in Bail Application No. 2312 of 2018, this Court while rejecting it has observed that, when the Applicant was in custody, threatened Police Officers on duty and two offences viz. CR Nos. 197 of 2017 and 222 of 2017 have been registered against him with Nagpada Police Station, Mumbai. He drew my attention to the affidavit filed by the Investigating Officer in Interim Application preferred by the Applicant in Special Leave Petition (Crl.) No. 1569 of 2019. He submitted that, in para No. 5 of the said affidavit it is categorically averred that, on 18th October 2019, the Applicant pretended some medical emergency and prayed the jail authorities of Thane Central Prison to send him for medical checkup and accordingly the Applicant was referred to J.J. Hospital, Mumbai. The Applicant was taken from Thane Central Prison to J.J. Hospital Mumbai. After the medical checkup and while returning to the jail, the Applicant asked / managed to request the escort Police Officers to take him to a housing society namely "Pushpanjali Residency", Ovla, District Thane, though the said spot was not on the route fixed by the police. The Crime Branch of Police received a secret information about some money transactions in the said society and accordingly the Crime Branch Officers with the help of Police Officers of Kasarwadvali Police Station conducted a raid at the said premises. The Police caught the Applicant with the owner of the said flat namely Mr.Raju Khare with an amount of Rs. 53,46,000/- which was in the denominations of Rs.2000/- and Rs.500/-. A General Diary Entry

No. 043 has been made in Kasarwadvali Police Station. That, the Commissioner of Police, Thane has taken strict action against the Police Escort Team, which consisted one Police Sub Inspector and four constables. That the Police Sub Inspector has been dismissed and the four constables have been suspended from service.

The learned Special P.P. by relying on a decision of the Hon'ble Supreme Court in the case of *Rajesh Ranjan Yadav Alias Pappu Yadav Vs. CBI Through its Director*, reported in (2007) 1 SCC 70 : (2007) 1 SCC (Cri) 254, submitted that, there cannot be any absolute and unconditional rule about when bail should be granted by the Court and when it should not. That, it cannot be said that, there is any absolute rule because of long period of imprisonment, bail must necessarily be granted. He submitted that, taking into consideration the seriousness of the offence and the conduct of the Petitioner, as noted above, the present Application may be dismissed.

6. Mr.Pradhan, learned counsel for Applicant on instructions submitted that, out of two offences registered against the Applicant while in custody as submitted by learned Special P.P., in CR No. 197 of 2017 the Applicant has been acquitted by the Trial Court and in the other offence i.e. CR No. 222 of 2017 is only pending for final adjudication. He further submitted that, as far as the incident of "Pushpanjali Residency" at Thane is concerned, no crime has been registered against the Applicant therein. The Applicant was not found with any amount at the said place. He submitted

that, even otherwise Applicant has already undergone pre-trial imprisonment of more than seven and half years and therefore he deserves to be released on bail on that ground alone.

7. It is an admitted fact on record that, in the present crime the Applicant has been arrested on 17th August 2015 and for last about seven and half years, he is in pre-trial incarceration. There are about 350 witnesses cited by the prosecution in the Chargesheet. The trial of the present case has not commenced till date. Taking into consideration the fact that, there are 27 accused persons and the prosecution has cited 350 witnesses, the possibility of conclusion of trial of the present case in near future appears to be blink.

The co-ordinate Bench by its Order dated 13th April 2022 in Bail Application No. 780 of 2021 has granted bail to co-accused Vijay R. Kasbe (A.No.1), predominantly on the ground that the said accused was in custody for about seven years without trial.

8. In the case of *Union of India Vs. K.A. Najeeb* (supra) the Hon'ble Supreme Court has held that, when a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the Court would ordinarily be obligated to enlarge accused on bail regardless of statutory restrictions imposed on right to bail by the prosecutions like 43(D) (5) of UAPA.

9. Taking into consideration the fact that, the Applicant is behind bars in the present case for more than seven and half years for an

offence/offences, some of which have even not prescribed the minimum sentence and maximum sentence of seven years and after applying the aforenoted principles enunciated by the Hon'ble Supreme Court in the case of *Union of India Vs. K.A. Najeeb* (supra), in view of this Court, Applicant can be enlarged on bail.

10. Hence the following Order :

- (i) Applicant be released on bail in Special Case Nos. 104 of 2015, 108 of 2015, 24 of 2016, 29 of 2016, 12 of 2017, 16 of 2017, 17 of 2017, 31 of 2018, 74 of 2018, 84 of 2018, 87 of 2018 and 88 of 2018, arising out of CR No. 336 of 2015 registered with Dahisar Police Station, Mumbai on his executing P.R. bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) with one or two solvent local sureties in the same amount.
- (ii) Applicant shall not leave jurisdiction of Districts of Mumbai, Thane and Pune without prior permission from the Trial Court.
- (iii) Applicant shall attend Office of Superintendent of Police, State C.I.D. (Crime), Navi Mumbai on every first Monday of the month between 11:00 a.m. to 01:00 p.m. initially for a period of one year and thereafter on every first Monday of every third calendar month i.e. four times in a year, till the conclusion of the trial.

- (iv) If the Applicant commits two consecutive defaults in complying with condition No.(iii) above, in that event, the prosecution will be at liberty to file an application for cancellation of bail.
- (v) Applicant shall not in any way directly or indirectly attempt to contact, pressurize or threaten either complainant or any of the witnesses in the present case.
- (vi) Applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

11. Application is allowed in the aforesaid terms.

[A.S. GADKARI, J.]

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by OMKAR
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