

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1738 OF 2023

Ajay Rajaram Hinge .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr.Manoj Mohite, Senior Advocate with Mr.Shailesh Chavan
and Mr.Rohan Hogle for the Applicant.

Mr.S.S.Hulke, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.
DATED : 01st SEPTEMBER, 2023

P.C:-

1. The present application is filed for the second time, as the earlier bail application filed by the Applicant was withdrawn, when I expressed my disinclination to entertain the same.

The subsequent bail application i.e. Bail Application No.1738 of 2023 was argued before a Co-ordinate Bench and by referring to the settled position of law to the effect that subsequent bail application should be placed before the same Judge, the application is placed before me.

While directing the application to be placed before me, Justice Amit Borkar, in his order dated 28/07/2023, clearly noted as under :-

“7.The sine qua non for filing subsequent bail applications is a material change in circumstances. A material change in circumstances settled by law is a change in the fact situation or law which requires the earlier view to be interfered with or where the earlier finding has become obsolete.”

2. Heard learned senior counsel Mr.Manoj Mohite for the Applicant and the learned A.P.P. Mr.S.S.Hulke for the State.

The Applicant came to be arraigned as accused in C.R.No.332 of 2016 registered with Talegaon Dabhade Police Station for the offences punishable under Sections 302, 395, 120-B, 143, 147, 148, 149 of the Indian Penal Code (for short, “**the IPC**”), Sections 3, 4, 25 and 27 of the Arms Act and Section 3[1][i], 3[2] and 3[4] of the Maharashtra Control of Organised Crime Act, 1999 (for short, “**the MCOCA**”).

It is the case of the prosecution that one Mr.Sham Dabhade alongwith his 21 gang members, which included the present Applicant, conspired and committed murder of one Sachin Shelke, to revenge the lodging of F.I.R. against Accused No.2 in the year 2013. As per the prosecution, on 16/10/2016, at around 9.20 a.m., when the deceased left for his office in his car and when the Complainant was proceeding on his motorcycle to visit his aunt at Parandawadi, when he approached to Khandage Petrol Pump, he noticed the Mercedes car of his brother Sachin and found Accused Sham Dabhade, Shankar @ Buntly Dabhade and other co-accused assaulting him by means of sharp weapons.

On being taken to hospital, he was declared dead and this resulted in the subject C.R. being registered, in which, the provisions of the MCOCA were invoked, after obtaining the prior approval.

The investigation revealed that the accused persons had gathered in a flat and hatched conspiracy to commit the offence and in this meeting, the Applicant had participated. The prosecution allege that there was firing at the deceased and specific role is attributed to an individual accused and the charge-sheet allege that the accused persons individually, singly or jointly, actively participated in the incident, being members of the organised crime syndicate, headed by Accused No.1-Sham Dabhade and by using violence and threat, committed the offence.

3. Mr.Mohite, the learned senior counsel appearing for the Applicant would rely upon the decision in the case of ***State of Maharashtra Vs. Captain Buddhikota Subha Rao***¹ and he would submit that two circumstances have transpired after the earlier bail application was disposed off as withdrawn, the foremost being the Applicant is incarcerated almost for a period of seven years, as the trial has not concluded. The second point, which according to Mr.Mohite, sufficient to secure his release, is the release of Accused No.2-Shankar @ Bunt Ramchandra Dabhade alongwith co-accused Monty @ Sanket Jagdish Nanekar on bail on the ground of long incarceration, by the Hon'ble Supreme Court of India. He has placed the orders on record.

The submission of the learned senior counsel in support of the Applicant is, the accused Shankar Dabhade is attributed a more active role than the present Applicant and the Hon'ble Apex Court appreciated his long incarceration for past six and

1 1989 Supp (2) SCC 605

half years and despite gravity of the accusations levelled, inferred that it is practically not possible for the trial Court to complete the trial, which involve 145 witnesses and 20 accused persons and secured his release, pending the trial.

Based on this order, another co-accused is also released on bail.

4. In *Babu Singh & Ors. Vs. The State of U.P.*², Hon'ble Justice V.R.Krishna Iyer, speaking for the Bench, has in his usual eloquent style, made the following pertinent observations :-

“2. Briefly we will state the facts pertinent to the present petition and prayer and proceed thereafter to ratiocinate on the relevant criteria in considering the interlocutory relief of bail. Right at the beginning, we must mention that, at an earlier stage, their application for bail was rejected by this Court on September 7, 1977. But an order refusing an application for bail does not necessarily preclude another, on a later occasion, giving more materials, further developments and different considerations. While we surely must set store by this circumstance, we cannot accede to the faint plea that we are barred from second consideration at a later stage. An interim direction is not a conclusive adjudication, and updated reconsideration is not over-turning an earlier negation. In this view, we entertain the application and evaluate the merits pro and con.”

5. It is a trite position of law that the second bail application can be entertained only when there is change in circumstances and this position of law is sought to be propagated by Mr.Mohite, by submitting that long incarceration with no possibility of the trial being concluded in the possible future time-line, is a change in the circumstance, which deserve his

² AIR 1978 SC 527

release on bail. Mr.Mohite is candid in submitting that, he is not calling in question the correctness of the earlier order, when the Court refused to entertain his application as he sought it's withdrawal, but he would restrict his application to the impossibility of the trial being concluded.

He has placed before me series of orders passed by the Hon'ble Supreme Court, when the accused have been released on bail even in case, where they faced accusations under MCOCA, on the ground of long incarceration. This includes the order passed by the Apex Court in the case of ***Yogesh Vinod Ahiwale Vs. The State of Maharashtra***³, wherein the Apex Court has brushed aside the objection that the offence invoked is under the MCOCA, and by taking into consideration the fact that the petitioner has already been incarcerated for a period of seven years and even the charges are not yet framed, he was directed to be released on bail.

6. Reliance is also placed by Mr.Mohite on the order of the Apex Court in the case of ***Indrani Pratim Mukerjee Vs. Central Bureau of Investigation & Anr.***⁴, where long incarceration with no possibility of timely conclusion of trial, formed the basis of the release on bail and the pertinent observations read thus :-

“Admittedly, the petitioner has been in custody for 6 ½ years. We do not intend to comment on the merits of the case which might be detrimental to the interest of either the prosecution or the defence. Taking into account the fact that the petitioner has been in custody for 6 ½ years and even if 50% of the remaining witnesses are given up by the prosecution, the trial will not complete soon, we are of the considered view that the petitioner is entitled to be released on bail.”

³ Special Leave to Appeal (Crl) No(s). 8496/22

⁴ Special Leave to Appeal (Crl) No(s).1627/22

7. Undisputedly, Article 21 of the Constitution of India encompasses a speedy trial and it necessarily contemplate an expeditious trial for an accused. A under-trial cannot be indefinitely detained, howsoever serious the accusations are.

The Hon'ble Apex Court in the case of *Union of India Vs. K.A.Najeeb*⁵, has once again reiterated the right to liberty guaranteed by part III of Constitution, which cover within it's protective ambit not only due procedure and fairness, but also access to justice and a speedy trial.

Referring to the special legislation like TADA, NDPS, it is noted that an accused is entitled to be enlarged on bail, under such special statute, when they are in jail for extended period of time with little possibility of early completion of trial and the constitutionality of the harsh condition for bail in such special enactment has been primarily justified on the touchstone of speedy trial to ensure the protection of innocent civilians and the concluding remarks of Their Lordship continue to be the guiding factor in all such cases of prolonged incarceration, which read as under :-

“18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.”

5 (2021) 3 SCC 713

8. It is ultimately the discretion to be exercised by the Court while exercising the power under Section 439 of Cr.P.C., by striking a balance between the seriousness of the accusations as against the period of custody suffered and the likely period within which the trial can be expected to be completed and in the present case, since the Applicant is incarcerated for a period of almost seven years, and there is no likelihood of completion of trial, with the volume of witnesses involved and by taking note of the long incarceration of the Applicant and snail speed of the trial, I have no hesitancy to record that the protracted trial is affecting the fundamental right of the Applicant, to have an expeditious trial and, hence, by imposing appropriate conditions, the Applicant deserve his release on bail.

Hence, the following order.

: ORDER :

- (a) Application is allowed.
- (b) Applicant -Ajay Rajaram Hinge shall be released on bail in connection with C.R.No.332 of 2016 registered with Talegaon Dabhade 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 before the concerned police station on first Monday of every month between 10.00 a.m. to 12.00 noon.
- (d) The Applicant shall not enter the jurisdiction of Pune City till conclusion of trial, except for marking the

attendance in Talegaon Dabhade Police Station, as directed in clause (c).

(e) 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 the Court or any Police Officer. The applicant shall not tamper with evidence.

(f) On being released on bail, the Applicant shall intimate his contact number and residential address to the Investigating Officer as well as to the in-charge of police station, where he would be residing and shall keep them updated, in the event of any change therein.

(SMT. BHARATI DANGRE, J.)