

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 2840 OF 2022

Sonia Ashok Pahuja	...Applicant
Versus	
The State of Maharashtra	...Respondent

....

Ms. Sana Raees Khan, Advocate for the Applicant.

Mr. Amin Solkar Special PP. a/w Ms. Veera Shinde, APP for the Respondent – State.

API. A. H. Shaikh, DCB, CID, Unit 10 Mumbai is present.

....

**CORAM : PRAKASH D. NAIK, J.
DATE : 21st MARCH 2023**

PC :

1. This is an application for bail in connection with C.R. No. 92 of 2016 registered with M.I.D.C. Police Station, Mumbai which was subsequently investigated by Crime Branch SIT vide C.R. No. 12 of 2016 for the offences punishable under Sections 302, 201, 182 and 120(B) of the Indian Penal Code and Sections 3, 25 and 27 of the Arms Act.

2. The Applicant had preferred Criminal Bail Application No. 914 of 2017 before this Court. The said application was withdrawn with liberty to prefer application for bail on medical grounds before Sessions Court, vide order dated 13th November 2017. The Applicant

preferred Bail Application bearing No.1714 of 2018 before this Court vide Order dated 08.02.2019, the said application was rejected on merits.

3. The applicant preferred an application for temporary bail before the Court of Sessions on the basis of directions of High Power Committee dated 11.05.2020 and Medical ground. The application was allowed by Order dated 13.10.2020 and applicant was directed to be released on interim bail for a period of 45 days or till such time as the state Government withdraws notification issued under the Epidemic Act, 1987, whichever is earlier. It was directed that initial period of 45 days shall stand extended periodically in blocks of 30 days each till such time notification is issued.

4. The applicant has renewed the prayer for bail by preferring this application on 03.10.2022. Vide Order dated 13.10.2022, the coordinate bench directed that, this being second bail application, it may be listed for hearing before the same Bench.

5. During the pendency of this application, the applicant has surrendered to custody on 22.02.2023.

6. The learned Advocate for the Applicant submitted that, the applicant was arrested on 14th July 2016. She is in custody for four years and three months. The accused cannot be incarcerated in custody for indefinite period. Trial would not be concluded within

short span of time. The prosecution has provided list of 171 witnesses. Long incarceration in custody without trial affects liberty under Article 21 of the Constitution of India. The applicant is suffering from several ailments. While granting temporary bail, the Sessions Court has considered the fact that prosecution has cited list of 171 witnesses and conclusion of trial may take considerable time. The Sessions Court also took into consideration the health condition of applicant. The applicant has complied with all the term and conditions imposed by Sessions Court while granting bail. The applicant has duly attended dates of hearing before the trial Court. Whenever it was not possible for applicant to attend the trial Court, she had applied for exemption which was allowed. The applicant had been attending local police station where she is residing on 1st and 15th of every month as per condition of bail. Accused No.2 Jitendra Yadav and accused No.6 Deepak Kumar Kakran were enlarged on bail by this Court. The applicant was on temporary bail for about two years and she has not misused the facility of bail. The applicant has not delayed the proceedings before the trial Court. Roznama of proceedings shows that, on several occasions the prosecution had sought adjournment or accused, who are in custody were not produced before the Court. While rejecting the bail application of co-accused, this Court had expedited the trial. There is no progress

in trial. Only two witnesses has been examined by prosecution. The health condition of applicant is unstable. The applicant is suffering T.B., hypertension, Coronary artery disease, post percutaneous transluminal coronary angioplasty (PTCA), hemoptysis, scoliosis of thoracic spine, reticular opacities in both the lungs, left lung lesion and she was admitted in the hospital for guided biopsy. She is also suffering from T.B. which fact was taken into consideration while granting bail. Reliance is placed on medical reports/medical case papers annexed to this application. The applicant is a lady. Further detention of applicant is not necessary.

7. Learned Advocate for the Applicant has relied upon following decisions:-

(i) Dr.Varavara Rao Vs. National Investigation Agency & Anr. decided by Apex Court on 10th August 2022 vide Criminal Appeal No. 1206 of 2022 arising out of SLP (Cri.) No. 5913 of 2022.

(ii) Ravi Kumar Vs. State of Haryana and Ors. decided by Punjab & Haryana at Chandigarh Court on 31st August 2021 vide CRM-M No. 23537 of 2020.

(iii) Indrani Pratim Mukerjea Vs. Central Bureau of Investigation & Anr. decided by Apex Court on 18th May 2022 vide Special Leave to Appeal (Cri.) No.16278 of 2022.

(iv) Avinash Anant Pawar @ Ajit Dada Vs. The State of Maharashtra decided by Apex Court on 11th August 2022 vide Special Leave to Appeal (Cri.) No. 1452 of 2022.

(v) Sagar Tatyaram Gorkhe and Anr. Vs. The State of Maharashtra decided by Apex Court on 3rd January 2017 vide Criminal Appeal No. 11 of 2017 arising out of Special Leave to Appeal (Cri.) No.7947 of 2015.

(vi) Angela Harish Sontakke Vs. State of Maharashtra.¹

(vii) Union of India Vs. K. A. Najeeb.²

8. Learned Special Public Prosecutor submitted that, the previous application for bail preferred by applicant has been rejected by this Court on merits by assigning detailed reasons. No case is made out for re-considering the prayer for grant of bail. The offence is of serious nature. This Court while rejecting the previous application has considered the role played by applicant in the crime. The prosecution is willing to proceed with the trial expeditiously. Although, there is proposed list of 171 witnesses, the prosecution would not examine all the witnesses. The accused are delaying the proceedings. The applicant and her daughter (co-accused) are filing applications causing delay in trial. Main accused is not yet arrested. One of the co-accused is detained in another/jail and prosecution is

1 MANU/SC/0685/2016

2 AIR 2021 SC 712

finding it difficult to secure his presence in this proceedings. The role of persons who are granted bail is distinguishable. Trial can be expedited. Although, the applicant was directed to be released on temporary bail by considering High Power Committee's guidelines issued due to spread of epidemic of Covid-19 the applicant did not surrender within time. Due to change in situation of Epidemic Notification was withdrawn. The trial Court had issued show cause notice to the applicant. Health condition of applicant is stable. Medical report submitted to this Court pursuant to the order passed by this Court would indicate that the condition of the applicant is stable. The first witness examined by the prosecution was attending the Court for long period of time. Cross-examination has been deferred at the instance of accused. Hence, application may be rejected.

9. The applicant was arrested on 14th July 2016. She is in custody for a period of four years and three months. Applicant was granted interim bail vide Order dated 13th October 2020 by the Court of Sessions. While granting interim bail, the learned Sessions Judge had observed that, due to spread of Covid-19 pandemic, the High Power Committee in view of the direction of the Supreme Court gave direction dated 11.05.2020 to all the subordinate Courts to consider bail applications of the prisoners exempting few category of cases.

Admittedly the applicant does not fall in the exempted category of cases and is covered by the direction dated 11.05.2020 of the High Power Committee. The applicant is in custody since 14th July 2016. Charge has been framed. However, compliance regarding submission of muddemal by the prosecution is not yet made and the trial has not yet began. There is list of 171 witnesses cited by the prosecution. Considering the present situation of pandemic, conclusion of trial may take considerable time. It is not disputed even by the document of the prosecution that the applicant is suffering from T.B. As per the direction of ICMR, which has been taken into consideration by the High Power Committee of the Delhi High Court, the patient suffering from HIV, Cancer, Chronic Kidney Dysfunctions, Hepatitis B and C, Asthama are vulnerable. The High Power Committee of Delhi High Court has relaxed the condition in respect of prisoners/under trial prisoners suffering from these deceases. It is the submission of the applicant that, if she is released on temporary bail, her husband and daughter would take care and provide medical facility which is otherwise not available in the jail premises or even in the Government hospitals under the present situation of Covid-19, as the hospitals are overburdened in dealing with Covid-19 pandemic. Patient suffering from T.B. have less immunity. They are more prone to get infected by other diseases. If she contacts Covid-19, it would

lead to co-morbid situation. On the contrary, if released on temporary bail, as per the directions of the High Power Committee she may be able to get proper care and treatment. Interim bail was granted subject to condition that, the applicant shall attend local police station where she is residing during her release on bail on the first day of month and the 15th day of month. Applicant to furnish details of her address and contact numbers to the Investigating Officers.

10. Prosecution had urged that, the applicant had delayed her surrender to custody. Apparently show cause notice was issued to applicant, which has been replied by her. The applicant has surrendered on 22.02.2023. It is pertinent to note that, applicant was not absconding. It is not in dispute that, while the applicant was on bail for a period of about two years, she had complied the condition of attending local police station and attended Court proceedings. Learned Special P. P. submitted that, once non bailable warrant was issued against the applicant for not attending Court. The warrant was cancelled. The applicant is resident of Haryana. On perusal of Roznama it can be seen that, the applicant had attended the Court on most occasions while on temporary bail. The order granting temporary bail indicate that, the trial court has taken into consideration the health condition of applicant, in the background

of epidemic and also the fact that the applicant is in custody from 04.07.2016 and there is no likelihood of conclusion of trial shortly.

11. The applicant has annexed the medical case papers to the application regarding treatment taken by her while on bail. The case papers refers to applicant being admitted with history of lung lesion, for USG guided biopsy. Radiology report refers to mass lesion crossing left oblique fissure and extending contiguously into left upper to be and abutting left pulmonary artery. The medical case paper tendered by learned Advocate for applicant during hearing of application refers to report dated 12.02.2023 reflecting diagnosis of papillary thyroid cancer, purulent sputum, chest pain, leukocytosis, pyogenic infection. Vide order dated 27th February 2023, this Court had directed the Medical Officer from the Jail where the applicant has been detained to examine applicant and submit the report to the Court about her health condition. The said report refers to history of tubercle lymphadenitis (extra pulmonary (lymphoid) TB) in June 2020. AKT given upper respiratory tract treatment. AKT (TB treatment) completed for extra pulmonary TB in 2020. She was referred to J.J. Hospital. Her general condition is good. Vital parameters are stable.

12. The applicant is in jail for substantial period. Prosecution case is based on several witnesses. This Court had expedited trial. Second

witness is under examination. Trial would not be over soon.

13. In the case of *Dr. P. Varavara Rao Vs. National Investigation Agency & Anr.* (supra), the High Court granted bail to the said accused for a stipulated period on medical ground. The accused was suffering from several ailments. He was aged around 82 years. The prosecution objected grant of bail on the ground that, there is sufficient evidence against him and in view of restrictions under Section 43-D(5) of UAPA Act. The Supreme Court considered the age, health condition of appellant/accused and that case is not even taken for considering whether charges need to be framed against accused who were before the Court. In the case of *Indrani Pratim Mukerjea Vs. Central Bureau of Investigation & Anr.* (supra) the Apex Court has considered the prayer for grant of bail, taking into account the fact that the petitioner has been in custody for six and half years and even if 50% of the remaining witnesses are given up by the prosecution, the trial will not complete soon. In the said case the trial has already began and several witnesses were examined. In the case of *Avinash Anant Pawar @ Ajit Dada Vs. The State of Maharashtra* (supra) the supreme Court has observed that the said accused has been granted bail on the ground that the accused had suffered incarceration for approximately four years and there is no likelihood of an early conclusion of the trial. Similarly in the case of *Sagar*

Tatyaram Gorkhe and Anr. Vs. The State of Maharashtra (supra) the Supreme court had observed that, the charges against the accused are serious. However, such charges will have to be balanced with certain other facts like the period of custody suffered and the likely period within which the trial can be expected to be completed. In the case of *Angela Harish Sontakke vs. State of Maharashtra* (supra) similar observation was made by the Apex Court and bail was granted to the accused. Accused was in custody about 5 years. The trial had not commenced. In the case of *Union of India V/s. K.A. Najeeb* (supra) it was held that, the presence of statutory restrictions like Section 43-D(5) of UAPA per se does not oust the ability of constitutional courts to grant bail on grounds of violation of Part-III of the Constitution. The restrictions under a statute as well as powers exercisable under constitutional jurisdiction can well be harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail the rigorous of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of UAPA being used as the sole metric for denial of bail for wholesale breach

of constitutional right to speedy trial.

14. The applicant is lady. She is in custody for more than four years. She was on bail for a period of about two years. She had complied conditions of bail. While granting temporary bail her health condition was taken into consideration. The applicant by relying on medical case papers claim to be suffering from health issues. All these factors would distinguish applicants case for granting bail.

ORDER

- (i) Bail Application No. 2840 of 2022 is allowed;
- (ii) The Applicant is directed to be released on bail in connection with C.R. No. 92 of 2016 registered with M.I.D.C. Police Station, Mumbai which was subsequently investigated by Crime Branch SIT vide C.R. No. 12 of 2016 for the offences punishable under Sections 302, 201, 182 and 120(B) of the Indian Penal Code and Sections 3, 25 and 27 of the Arms Act, on furnishing PR. bond in the sum of Rs. 1,00,000/- (Only One Lac) with one or more sureties in the like amount;
- (iii) The applicant shall attend local Police Station where she resides once in a month on first Saturday of the Month between 11.00 to 1.00 noon.
- (iv) Applicant shall attend the trial Court on the date of hearing of

the case regularly unless exempted by the Court;

(v) The applicant shall furnish her permanent residential address and contact details to the trial Court while executing bail bond. The applicant shall not tamper with the evidence.

(vi) Application stands disposed off accordingly.

(PRAKASH D. NAIK, J.)