

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3706 OF 2022**

Yogesh Narayan Raut ...Applicant
vs.
State of Maharashtra ...Respondent

**WITH
INTERIM APPLICATION NO.1595 OF 2023
IN
BAIL APPLICATION NO.3706 OF 2022**

Pravin Ramchandra Raut ...Applicant
vs.
State of Maharashtra ...Respondent

Mr. Milan Desai for the Applicant.
Mr. Taraq Sayed with Pratap Nimbalkar for the first informant.
Mr. S. R. Agarkar APP for the Respondent-State.
Mr. S. S. Khade, PSI, Crime Branch, Unit-4, Thane.

CORAM : S. M. MODAK, J.

DATED : 23RD JUNE 2023

P. C. :

1. Heard learned Advocate Mr. Desai for the Applicant-accused No.1, learned Advocate Mr. Sayed assisted by learned Advocate Mr. Nimbalkar for the first informant and learned APP Mr. Agarkar for the Respondent-State.
2. This Application for bail is filed for the reason that fundamental right of speedy trial is violated and as such the

Applicant is entitled for bail.

3. Learned Advocate Mr. Desai relied upon various judgments earlier, and today also he relied upon following judgments :

(a) *Chintan Vidyasagar Upadhyay vs. State of Maharashtra*¹; and

(b) *Eklakh Rahim Shaikh @ Peti Vs. State of Maharashtra*²

So far as the right of speedy trial is concerned, no one can deny such right. In number of judgments, the Hon'ble Supreme Court so also various High Courts have put **seal of approval** on right to speedy trial and when such right is not recognised, there are various orders wherein the bail is granted, so also certain directions are issued. It is also true that there are stringent provisions for grant of bail under special enactments, even in such cases this Court as well as Hon'ble Supreme Court has opined that these special provisions will not come in way of grant of bail, if his right to speedy trial is violated.

Facts of this case.

4. Considering above observations in various judgments, now it needs to be seen what are the factual aspects of this case. It is true

1 Petition for SLP (Cri.) No.2543/2021 dt. 17/09/2021

2 Bail Application No.3792/2022 dt. 27/03/2023

that present Applicant, who is accused No.1 is behind bar since 2014. It is also true that the Bail Application filed by this Applicant before the Special Court came to be rejected on 2nd November 2018. The order is there on page 1 of the compilation dated 14th June 2023 filed by the first informant. There is submission that present Applicant has not approached this Court for bail either on merits or on account of violation of fundamental right to speedy trial. When query is made as to whether the Applicant has applied for bail on merits or not, it is submitted that his Application is restricted only on account of violation of right to speedy trial.

5. According to learned Advocate Mr. Desai for the Applicant there are various occasions wherein the Applicant was required to agitate the issues about non compliance of the obligation by the State and those instances are quoted. In order to buttress his submission that there is violation of **right** to speedy trial, those circumstances can be narrated as under :

- (i) Even though the compilation of the first informant consists of copy of draft charge dated 12/02/2019, a copy of roznama dated 17/03/2021 is produced which says that draft charge is not ready.

- (ii) Co-accused Pravin Morage, who is granted bail by this Court was required to agitate the issue about non supply of the documents, It is referred by learned Single Judge in the order dated 31st October 2017, passed in his Bail Application No.1238 of 2017.
- (iii) The said Application was withdrawn by the co-accused-Pravin Morage.
- (iv) When the Sessions Court has rejected the Application of co-accused-Pravin on 23rd November 2016, the prosecution relied upon certain documents which were not part of the charge-sheet and that's why the said co-accused-Pravin agitated that issue.
- (v) When the co-accused moved fresh Bail Application No.74 of 2018, he has withdrawn this Application with liberty to apply again before the Sessions Court. The copy of said order dated 14th June 2018, is submitted by Mr. Desai. The contention is that the documents which are relied upon by the prosecution were not supplied to the accused persons in general and to co-accused- Pravin in particular.
- (vi) There is list of witnesses given by the Special Public

Prosecutor to the trial Court on 9th May 2023, consisting of seven witnesses. Whereas apparently there is inconsistency in between said list and list of witnesses submitted by Special Public Prosecutor in June 2023. The said list consists of 25 witnesses, whereas those 25 witnesses does not include names of seven witnesses examined earlier.

- (v) That's why it is apprehended that the trial will not be over within period assured by learned APP and even assured by learned Advocate Mr.Sayed for the first informant. They have assured that within six months period the trial will be over.
- (vi) In order to show that accused persons have brought to the notice of the trial Court about right to speedy trial, Mr. Desai relied upon copy of the Application dated 4th November 2017, preferred by co-accused Gangaram Atmaram Linge.
- (vii) One more instance is quoted about conduct of the Investigating Officer, that is recorded in roznama dated 2nd August 2021. It mentions that the Investigating Officer has taken five adjournments for taking cognizance. It pertains to

supply of documents to the accused.

(viii) In the roznama dated 17th June 2022, wherein Exhibit-149 was moved by accused for taking cognizance of disobedience of Court order.

6. According to Mr. Desai even though when 28 witnesses were examined, and only 12 witnesses are yet to be examined, the Hon'ble Supreme Court was pleased to grant bail in case of *Chintan Vidyasagar Upadhyay*. (supra)

7. As against this learned APP submitted that evidence of four witnesses is completed and evidence of fifth witness has started. After taking instructions from the Special Public Prosecutor appearing before the Sessions Court and the Investigating Officer in present case, learned APP submitted that the trial will be over within six months.

8. Mr.Sayed submitted that from their end the trial is not delayed and he relied upon the following circumstances :

- (a) Rejection of the Bail Application of this Applicant by the trial Court on 2nd November 2018.
- (b) Copy of the draft charge submitted to the Court on 12/02/2019.

- (c) However, learned Advocate Mr. Sayed could not give any explanation why there is reference in one of the roznama referred above, it is mentioned that the charge is not ready. Now Mr.Sayed invited my attention to roznama dated 12/02/2019, page 882 which says that draft charge was filed by Special Public Prosecutor. With his experience of the trial Court, he tried to explain the noting in the roznama 'about charge is not ready', was made, probably it was not brought to the notice of judge seized of the case.
- (d) Roznama dated 18/11/2022 which mentions that Application is filed by accused persons and present Applicant-Yogesh Raut.
- (e) Roznama dated 9/05/2023, (after this Court has issued certain directions) which mentions that the say was not filed by accused persons on Application moved under section 294 of the Code of Criminal Procedure.
- (f) One more conduct of the accused persons thereby refusing to appear before the Court unless their handcuffs are removed. The trial Court issued certain directions on 9th May 2023.
(page 40)
- (g) The conduct on the part of the Applicant in not cooperating to

speedy trial because the Applicant has not appointed an Advocate and it is referred in the order dated 16th May 2023, (page 42). Para 3 says that learned Advocate Mr. Mokashi has assured that he will file Vakalatnama on the next date.

- (h) Mr. Desai clarified that if earlier the Applicant is not represented by an Advocate, how come he could have argued his Bail Application and discharge Application.
- (i) The conduct of asking longer date when the evidence of PW 5 Raju Shinde was under way. Copy of his evidence dated 16/6/2023, was produced. On request of learned Advocate Mr. Mokashi further date of 3rd July 2023, was given. Though, it is not part of the record, it is submitted by Mr. Sayed that in fact they have requested the trial Court to give shorter date.
- (j) The roznama dated 16th June 2023, thereby mentioning that evidence of PW 5 is recorded and now the matter is kept on 3rd July 2023.

Consideration.

9. No one can deny that present Applicant is behind bar since 2014. Both sides have quoted the circumstances as mentioned

above, in order to show how there is laxity on the part of prosecution and how attempt has been made by the Applicant to delay the trial. It is true that person who is behind bar is anxious that his matter will be heard as early as possible because one can understand including this Court, what are the feelings of a person whose liberty is curtailed and who is inside jail. Apart from the instances quoted by both sides, there may be number of instances which are part of record of the trial Court wherein either the prosecution has not performed their duties in time and on certain occasions, the accused including present Applicant may be instrumental in delaying hearing of case on that particular date.

10. Even though Mr. Desai submitted that this Court has to give finding that the prosecution is responsible for delay of the trial and this Court will have to consider whether the Applicant is responsible or not, for causing delay in the trial.

11. Even it is true that this Court has not called for a report from the Judge who is seized of the matter. So it is difficult to give a categorical finding that it is prosecution, who is to be blamed entirely for delayed trial. It is also difficult to give categorical finding that the Applicant including other accused persons have

delayed the trial.

12. Mr. Desai submitted that even though now the trial has started and evidence of four witnesses is complete, whatever has happened in past cannot be remedied, even if this Court will issue further directions as stated above. The present Applicant is having right for speedy trial. However, considering the facts and circumstances of the case mentioned above, this Court is unable to give any finding as to exactly who is responsible for that because it requires report from the learned Special Judge. It is also true that even though the Applicant is behind bar since 2014, he has approached this Court in the year 2022, with grievance about denying right to speedy trial. Let us presume that the Applicant has not approached to this Court on merits.

13. So considering the facts and circumstances of the case, I am not inclined to grant bail to this Applicant which is claimed on account of delay in trial. However, the facts and circumstances warrant me to issue necessary direction to the prosecution as well as to the Court seized of the matter.

Expectations from the Prosecutor seized of the case

14. Learned Advocate Mr.Sayed tried to explain that even though there is inconsistency in between first witness list as recorded above and in the second witness list (consisting of 7 and 25 witnesses), according to him there may be occasion for the prosecutor seized of the matter in view/to examine the witnesses, who is not named in the list of witnesses. He is right in his submission. Ultimately, the Special Public Prosecutor who is in-charge of the case is expected to be aware about materials collected during investigation and witnesses to be examined on behalf of the prosecution. I do not find any satisfactory explanation why there is inconsistency in between first list and the second list, so to say that names of seven witnesses mentioned in first list are not included in the second list. So what the court can gather, is whether it is due to oversight, whether it is negligence or whether the prosecution is dropping those seven witnesses. This Court feels that the prosecutor in-charge of the case should be vigil in conducting further trial in the case.

Expectations from the advocates of the accused.

15. At the same time there is also added responsibility on the

Advocate, who is representing accused before the trial Court. It is also expected from them to cooperate for smooth trial. I do not mean to say that they should not exercise their right to defend their client. But it is expected from them to give priority to this matter and it is expected from them not to ask for longer date.

Expectations from the Judge seized of the case.

16. At the same time it is expected from learned Judge, who is seized of the matter to decide the issues, which are raised before him as early as possible and he should make endeavor that in no contingency, hearing of the case should be delayed, considering the stage. Even I hasten to add that it is responsibility of the Judge, who is seized of the matter to see that both sides perform their respective obligations and if they are not performing without justifiable reason, learned Judge who is seized of the matter to pass appropriate orders including imposing heavy costs on either side and not nominal costs, from time to time considering the facts and circumstances of the case.

17. This Court is aware of huge pendency of the trial courts especially District and Sessions Courts. It is also true that there are

number of under trial prisoners waiting for their turn. It is also true that some of the Courts are not presided over by any of the Judge. On many occasions, it becomes difficult for the Learned Judge to adhere to time limit fixed by this Court.

18. Ultimately the Learned Principal District Judge is head of the administration of the district and he has to supervise allocation of the judicial and administrative work. So if the learned Judge seized of the matter is overburdened with number of expedited matters, he is at liberty to bring it to the notice of the learned Principal District Judge. So that the learned Principal District Judge, Thane in turn may reallocate the judicial work if it is permissible. Even the learned Principal District Judge is at liberty to bring this fact to the notice of Registry of this Court about insufficient number of judges, so that Registry of this Court will be in a position to place the request before the Hon'ble Chief Justice of this Court for necessary guidance and directions. This observation is made because daily this Court is hearing grievances especially from the Thane District that cases especially involving under trial prisoners are not being heard.

19. Even I expect the learned Special Judge to give periodic report about progress of the trial to this Court, so if there is no delay in

trial, either of the parties can address the Court seeking further directions.

20. Considering above discussion, I intend to dispose of the application by giving following directions :---

Directions

- (a) Learned trial Judge to complete trial within a period of six ` months from today.
- (b) I direct learned trial Judge seized of the case to give periodical report to the Registry of this Court after completion of every three weeks, till the trial is completed.

21. With these observations, this Application is disposed of. Consequently, Interim Application No.1535 of 2023 is also disposed of.

22. Copy of this order be send to the office of the Registrar General of this Court.

23. Copy of this order be sent to the Court seize of the matter and also to the learned Principal District Judge, Thane.

[S. M. MODAK, J.]