



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 619 OF 2023

(PANKAJ SURESH HARODE..VS.. STATE OF MAH. THR. PSO LAKADGANJ, NAGPUR)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Nitesh Samundre, Advocate for Petitioner.
Shri K.R.Lule, A.P.P. for Respondent/State.

CORAM : ANIL S. KILOR, J.
DATED : NOVEMBER 30, 2023.

1. Heard.
2. This is a successive bail application filed by the applicant after withdrawal of the earlier application on 21/09/2022 with liberty to file fresh application if there is no progress in the trial.
3. By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No.273 of 2017, registered with Police Station, Lakadganj, Nagpur for the offences punishable under Sections 364, 364-A, 384, 386, 302, 201, 120(b) read with Section 34 of the Indian Penal Code, Section 3 and 25 of the Arms Act and Section 135 of the Maharashtra Police Act.
4. The learned counsel for the applicant states that after withdrawal of the earlier application there is no progress in the trial and till date though the period of six years is lapsed not a single witness has been examined. It

is further pointed out that there are 101 witnesses and therefore, there is no possibility that in near future the trial would conclude. He, therefore, submits that considering the fact that the applicant is in jail from last six years, which is a substantive period, the applicant may be released on bail.

5. On the other hand, learned A.P.P. Shri Lule, on instructions, submits that within next six months the trial may be concluded. He has pointed out that the Investigating Officer is present in the Court. However, he is not disputing that there are 101 witnesses and even after the trial was expedited vide order dated 21/09/2022 in last more than one year there is no progress in the trial or not a single witness was examined by the trial Court. The learned A.P.P. further submits that if the applicant is released on bail he may pressurize the prosecution witnesses or tamper the prosecution evidence and he may not be available for trial.

6. In that view of the matter, considering the above referred fact it is difficult to accept that the trial Court would examine 101 witnesses and conclude the trial within six months. Even if it is taken that the prosecution would not examine all the 101 witnesses but will examine 20 or 30 witnesses out of 101 witnesses, considering the pace of the trial with which it is progressing, the trial would not conclude in near future. Admittedly, for a substantive period i.e. for six years the applicant is in jail.

11. In the case of *Union of India ..vs.. K.A.Najeeb*, reported in **(2021) 3 SCC 713** the Hon'ble Supreme Court of India, has held thus:

"15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) V/s Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that 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 them on bail.

17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours 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 the 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 or for wholesale breach of constitutional right to speedy trial."

12. In the light of the above referred observations and considering the fact that the applicant has already undergone substantive incarceration, I am of the opinion that the applicant is entitled for grant of bail.

13. The apprehension expressed by the learned A.P.P. that if the applicant is released on bail he may pressurize the prosecution witnesses or tamper the prosecution evidence and further he may not be available for trial, can be addressed by imposing certain stringent conditions. Accordingly, I pass the following order:

- i) Criminal application is allowed;
- ii) It is directed that the applicant shall be released on bail in Crime No.273 of 2017, registered with Police Station, Lakadganj, Nagpur for the offences punishable under Sections 364, 364-A, 384, 386, 302, 201, 120(b) read with Section 34 of the Indian Penal Code, Section 3 and 25 of the Arms Act and Section 135 of the Maharashtra Police Act, on furnishing P.R.Bond of Rupees Fifty Thousand with one solvent surety in the like amount;
- iii) The applicant shall not enter into the territorial jurisdiction of Buti-Bori & Nagpur till the trial is concluded, except for attending the trial.

- iv) The applicant shall give his address and name of the Police Station which he shall attend on 1st and 16th day of every month between 11:00 a.m. and 12:00 noon, till culmination of trial.
- v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;
- vi) Liberty is granted to the State for cancellation of bail if the applicant commits similar offence.
- vii) The applicant shall attend the trial before the Sessions Court regularly on every date unless exemption is granted by the Sessions Court.

The Criminal Application is **disposed of** accordingly.

JUDGE