



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 BAIL APPLICATION NO.1021 OF 2024

NARENDRA @ BHATU YASHWANT CHAUDHARI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Thoke D. B. (Through V. C.).
APP for Respondents-State : Mr. G. O. Wattamwar.

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CORAM : S. G. MEHARE, J.
DATE : 27.09.2024

PER COURT :-

1. Heard the learned counsel for the applicant and learned APP for the respondents-State.
2. The applicant seeks bail in Crime No.280 of 2023, registered with Amalner Police Station, District Jalgaon, for the offences punishable under Sections 302, 201, 182 of the IPC.
3. The prosecution has a case in short that applicant Narendra was captured in the CCTV footage assaulting the deceased by kicks and blows, iron rod and a big stone due to which the deceased died. The applicant has filed an earlier bail application before this Court. This Court (Coram : S. G. Chapalgaonkar, J.) after hearing the applicant on merit on 07.12.2023, the Court granted leave to the applicant to

withdraw the bail application. However, liberty was granted to him to move afresh after six months, if trial would not progress by that time.

4. Learned counsel for the applicant was heard on previous dates. On hearing the learned counsel for the applicant on the point of no progress in the trial, this Court called the report of the District Judge by order dated 06.09.2024. The learned Trial Court explained that since the applicant was not produced from jail, trial could not be progressed. Then, matter was again heard on 18.09.2024. The Court has recorded the reasons for the reasons why the matter could not be progressed. When the applicant was produced, he engaged the lawyer and filed the bail application. There was no regular Court and the in-charge Court was looking after the matter. The Court has expressed the opinion on the ground to seek bail in that order. Since learned counsel for the applicant is arguing that granting opportunity to file bail application after six months to him is a right to open the case again afresh. For the sake of brevity, those observations are not reproduced here. The Court granted time. The matter was listed today for instructions on withdrawal.

5. The learned counsel for the applicant again opened the argument as it is a regular practice here, and pressed in to service the judgment of the Hon'ble Supreme Court in Criminal Appeal No.3352 of 2023 (arising out of Special Leave Petition (Criminal) No.8167 of 2023) and in Criminal Appeal No.3353 of 2023 (arising out of Special Leave Petition (Criminal) No.8188 of 2023 and read the paragraph No.29 of the said order. The said paragraph reads thus ;

“29. In view of the assurance given at the Bar on behalf of the prosecution that they shall conclude the trial by taking appropriate steps within next six to eight months, we give liberty to the appellant – Manish Sisodia to move a fresh application for bail in case of change in circumstances, or in case the trial is protracted and proceeds at a snail's pace in next three months. If any application for bail is filed in the above circumstances, the same would be considered by the trial court on merits without being influenced by the dismissal of the earlier bail application, including the present judgment. Observations made above, re.: right to speedy trial, will, however, be taken into consideration. The appellant – Manish Sisodia may also file an application for interim bail in case of ill- health and medical emergency due to illness of his wife. Such application would be also examined on its own merits.”

6. Thereafter, the applicant has filed a Criminal Appeal No.3295 2024 (arising out of Special Leave Petition (Criminal) No.8781 of 2024) and Criminal Appeal No.3296 2024 (arising out of Special Leave Petition (Criminal) No.8772 of 2024). The facts observed by the Hon'ble Supreme Court in that case in

paragraph No.9 were that by order dated 30.04.2024, the Trial Court rejected the said bail application on the ground that there were no change in the circumstances. Against the said order, the bail application before the High Court was also rejected.

7. In that application, the learned APP had raised the objection that appellant cannot be permitted to file the second set of SLP to challenge the order of the High Court, dated 21.05.2024 when the earlier SLP arising out of the same order were disposed of. The liberty granted by this Court vide order dated 04.06.2024 has to be considered as a liberty to apply to the Trial Court afresh. Only after the appellant approaches the Trial Court and in the event he did not succeed before the Trial Court, thereafter he approaches the High Court and in the event he also does not succeed before the High Court, then he may be entitled to approach this Court. The preliminary objection was raised by the learned counsel for the applicant therein. With regard to this objection, the Hon'ble Supreme Court observed in paragraph No.33 that a careful reading of the second order of this Court dated 04.06.2024 would show that this Court recorded that they did not propose to go into the arguments or dwell upon it in view of the liberty granted in

the first order of this Court. Thereafter, this Court noticed the assurance of the learned Solicitor General that the investigation would be concluded and final complaint/charge-sheet would be filed at any rate on or before 03.06.2024. This Court further observed in its second order that since the period of 6-8 months fixed by it in its first order had not come to an end, it was inclined to dispose of this petition with liberty to the appellant to revive his prayer. It will be a travesty of justice to construe that the carefully couched order preserving the right of the appellant to revive his prayer for grant of special leave against the High Court order, to mean that he should be relegated all the way down to the trial court. The memorable adage, that procedure is a hand maiden and not a mistress of justice rings loudly in our ears.

8. In paragraph No.44, the Hon'ble Supreme Court observed that the learned Special Judge and the learned Single Judge of the High Court have considered the applications on merits as well as on the grounds of delay and denial of right to speedy trial. We see no error in the judgments and orders of the learned Special Judge as well as the High Court in considering the merits of the matter. Further it is observed that, in view of the observations made by this Court in the first

order, they were entitled to consider the same. However, the question that arises is as to whether the Trial Court and the High Court have correctly considered the observations made by this Court with regard to right to speedy trial and prolonged period of incarceration. The courts below have rejected the claim of the appellant applying the triple test as contemplated under Section 45 of the PMLA. In our view, this is in ignorance of the observations made by this Court in paragraph 28 of the first order wherein this Court specifically observed that right to bail in cases of delay coupled with incarceration for a long period should be read into Section 439 Cr.P.C. and Section 45 of the PMLA.

9. The Trial Court recorded the findings as regards the speedy trial that the appellant was responsible for delaying the trial. However, the Hon'ble Supreme Court recorded the findings that we find that the findings of the learned Trial Judge that it is the appellant who is responsible for delaying the trial is not supported by the record. Lastly, the Hon'ble Supreme Court granted the bail to the applicant on the sole ground of affecting the right to speedy trial. The Hon'ble Supreme Court in this case, nowhere dealt with the issue whether giving a right to file fresh bail application gives a right

to the accused to claim the bail as a matter of right as it appears from the arguments of the learned counsel for the applicant or even it does not mean to say that he is entitled to reopen the argument based upon the same material which were considered earlier by the Court while declining the bail.

10. The argument of the learned counsel for the applicant that in the case of *Manish Sisodia (supra)*, he was facing the trial under MPLA Act for which conviction is not more than seven years. In that case, the Trial Court had misread the directions of the Hon'ble Supreme Court. Therefore, the specific findings in the order dated August 9, 2024 were recorded that the test applied for bail by the Trial Court as well as the High Court were in ignorance of the observations made by the Hon'ble Supreme Court in paragraph No.28 of the first order. He would submit that the said observations has a reference of Section 45 of the PML Act read with Section 439 of the Code.

11. The learned APP further argued that this is a case of cogent and reliable evidence committing the brutal murder of a person. It is punishable with death. That apart, the incarceration of the applicant is not for a longer period. Therefore, the learned counsel for the applicant relying on the

case of this Court ***Gaurav Bandu Patil Vs. State of Maharashtra and another in Bail Application No.603 of 2024*** asking for the bail would not apply. Because in that case, the applicant was incarcerated for five years. There appears substance in his submission. He has distinguished the ratio laid down by the Hon'ble Supreme Court in the case of *Manish Sisodia (supra)*. He vehemently argued that the nature of the offence and evidence in this two cases is altogether different. It appears that he is correct in arguing that the best possible evidence of CCTV footage is available against the applicant. He has been specifically identified in the CCTV footage assaulting the deceased with weapons.

12. The learned counsel for the applicant replied to the argument of the learned APP as regards to CCTV footage that CCTV footage was not recovered properly. The hard disc of the CCTV footage was not recovered. It was kept in one pen drive for one month. It was not supported with the certificate under Section 65-B of the Indian Evidence Act. The applicant himself lodged the report against one of the witnesses of the incident. In a nutshell, his arguments were that the CCTV footage did not come forthwith to ascertain its veracity and legality. He referred to the case of ***Arjun Panditrao Khotkar Vs. Kailash***

Kushanrao Gorantyal ; AIR 2020 SC 4908 and argued that if the electronic evidence is collected, a certificate as contemplated by Section 65-B is mandatory. However, this Court is of the view that thereafter the law was developed and it is made clear that such certificate under Section 65-B of the Evidence Act may be secured any time during the trial. Be that as it may, while considering the bail, the Court is not supposed to record the findings as if it is a trial. The Court has to consider the *prima facie* material against the applicant. At this juncture, *prima facie* evidence is available against the applicant and those facts are to be considered while dealing with the earlier bail application. The incarceration of the applicant is not so longer, considering the evidence as well as the charges levelled against the applicant. If really, the accused were interested to get their matter disposed of quickly, they would extend their co-operation to the Court. But, it is not experienced. It is experienced that in most of the cases, the lawyers representing the under trial accused, insist the Court for their physical presence production and the matters are adjourned. But now, it reveals that it is a tactics to create a ground for bail.

13. The question is whether the Court dealing with bail can direct the Trial Court to decide the matter within stipulated period. Recently, the Hon'ble Supreme Court in the case of ***Rup Bahadur Magar @ Sanki @ Rabin Vs. The State Of West Bengal***, Criminal Appeal No.4144 of 2024 (Arising out of S.L.P (Criminal) No.11589 of 2024) has taken the view that no time would be fixed by the bail Court while rejecting the bail application which is reproduced as follows :

“We have repeatedly observed that while rejecting bail applications, the High Courts are passing the orders directing disposal of trials within a time schedule. Apart from the fact that such directions are contrary to the law laid down by the Constitution Bench in the case of High Court Bar Association, Allahabad Vs. State of U.P. & Ors., such orders put undue pressure on the Trial Courts which are already flooded with a lot of work. Unless the factual situation is extra ordinary and exceptional, the High Courts should refrain from passing such orders, as held by the Constitution Bench in the aforesaid judgment.”

So, considering the latest view of the Supreme Court, expressed the opinion that merely granting liberty after a particular fixed time to file a fresh application, if the trial could not be progressed by that time also does not create a right in the application.

14. After having gone through the evidence against the applicant and the findings recorded above, this Court is of the view that the applicant is not entitled to bail on any of the ground.

15. For the above reasons, the bail application stands dismissed.

(S. G. MEHARE, J.)

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