



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

929 BAIL APPLICATION NO. 575 OF 2024

DEVIDAS @ CHETAN BAPU AASNE

VERSUS

THE STATE OF MAHARASHTRA

WITH

CRIMINAL APPLICATION NO. 2656 OF 2024
IN BA/575/2024

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Advocate for Applicant : Mr. Shaikh Majit S. h/f Mr. Deshmukh
Sachin S.

APP for Respondent/s-State : Mr. S. B. Pulkundwar.
Advocate for Informant to assist APP : Mr. Gandhi A. S.

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CORAM : S. G. MEHARE, J.

DATE : 15.10.2024

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and learned counsel for the informant.
2. The applicant seeks bail in Crime No.249 of 2021, registered with Kopergaon Taluka Police Station, District Ahmednagar, for the offences punishable under Sections 302, 364, 201, 323 read with Section 34 of the IPC.
3. The applicant seeks bail on the ground of indefinite incarceration in jail. He has been arrested on 02.07.2021.

Learned counsel for the applicant argued that the applicant was not produced by the jail authority nor an attempt was made to frame the charge on V. C. He would submit that in view of the recent pronouncement of the Hon'ble Supreme Court in *Javed Gulam Nabi Shaikh Vs. State of Maharashtra and others ; Petition for Special Leave to Appeal (Crl.) NO.3809 of 2024 (Arising out of impugned final judgment and order dated 05.02.2024 in CRLA No.1060 of 2023 passed by the High Court of Judicature at Bombay), dated 03.07.2024*, the applicant deserves bail. Non producing the applicant for such a long period for framing the charge, violated his fundamental right to speedy trial. The prosecution cannot ensure the speedy trial. Hence, he may be granted bail.

4. Learned APP and learned counsel for the informant have pointed out from the copies of the roznama of the Trial Court that co-accused who is brother of the accused was absent and the Court was busy in other matters. There was no deliberate delay in proceeding with the matters. The Courts are heavily burdened with large number of under trial prisoners case and other time bound matters. So, it was practically not possible to touch every such matters at the earliest. The public prosecutor are also heavily burdened with other ready under trial matters.

Therefore, it could not be said that the prosecution has deliberate intention to keep the applicant behind bar.

5. It is further argued that considering the facts of the case, particularly nature of the offence, it would be harmful to release the applicant only for delay in commencing the trial. If the harden applicants are released on bail on this ground only, the public safety may be in danger. The prosecution may apply the Trial Court for framing the charges by producing the accused on V. C.

6. Learned counsel for the applicant in reply would submit that already the applicant has been incarcerated for more than two years without progress in the trial. Even if the charges are framed, these facts would not be changed. The trial may take its time and till that time, the applicant would have to remain behind bar.

7. The roznama is a mirror of the way dealing with the matters of the under trial prisoners. The applicant is ready to abide by the conditions if enlarged on bail. There was no dispute that till date the charge has not been framed. The applicant was consistently not produced from the jail for framing the charge. The Court was busy with the other similar matters. Production of the accused from jail is the

responsibility of the State and not of the jail authority. For taking the custody for under trial prisoners, the jail authority is helpless. Considering the way of trial, it could not be believed that there would be a speedy trial. The Hon'ble Supreme Court in the case of Javed (supra) has observed that if the State or any prosecuting agency including the Court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

8. In the present case also, the applicant has been languishing in jail more than two four years without framing the charge. The ratio laid down by the Hon'ble Supreme Court in Javed (supra) is squarely applied to the case at hand. The right of speedy trial under Article 21 of the Constitution of India needs to be protected. The accused cannot be incarcerated for indefinite period. Therefore, the applicant deserves bail. Hence, the following order :

ORDER

- (i) Bail Application is allowed.

(ii) Applicant **DEVIDAS @ CHETAN BAPU AASNE** be released on bail on furnishing PB. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of like amount, on the following conditions :

- (a) The applicant should not tamper with the prosecution witnesses.
- (b) He should attend the trial on each and every effective date.
- (c) He should not involve in any criminal activities and do not commit crime till the trial is concluded.
- (d) He should not enter village Padhegaon till the trial is concluded.
- (e) He should furnish his cell phone number with the Trial Court as well as concerned Police Station with an undertaking that he would not change it till the trial is concluded.

(iii) Criminal application No.2656 of 2024 stands disposed of.

(S. G. MEHARE, J.)

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