



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 1707 OF 2024

Bal @ Balasaheb Jagannath Bothe,
Age 54 years,
Occu. Service as Executive Editor,
R/o. Jidda Bungalow, Dena Bank Colony,
Near Premdan Chowk, Savedi,
Ahmednagar

.. Applicant
(Original Accused No.6)

Versus

The State of Maharashtra
Through the Police Station Officer,
Supa Police Station,
District Ahmednagar

.. Respondent

**WITH
CRIMINAL APPLICATION NO. 4333 OF 2024 IN BA/1707/2024**

Smt. Sindhubai wd/o. Sukhdeo Waykar,
Age 68 years, Occu. Household,
R/o. Mali Babhulgaon, Tq. Pathardi,
District Ahmednagar

.. Applicant
(Original Informant)

Versus

1. Bal @ Balasaheb Jagannath Bothe,
Age 54 years,
Occu. Service as Executive Editor,
R/o. Jidda Bungalow, Dena Bank Colony,
Near Premdan Chowk, Savedi,
Ahmednagar

(Original Accused No.6)

2. The State of Maharashtra
Through the Police Station Officer,
Supa Police Station,
District Ahmednagar

.. Respondents

Advocate for Applicant : Mr. Nitin Bhavar Patil
Llp Advocate And Legal Consultancy;

A.P.P. for Respondent : Mr. A. S. Shinde;

Advocate for Informant : Mr. Rajendra P. Phatake

CORAM : S. G. MEHARE, J.

DATE : 24-10-2024

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent.

2. The applicant seeks bail on the ground of delay caused for speedy trial, in C.R.No.I-0478 of 2020 registered with Police Station, Supa, District Ahmednagar, for the offences punishable under Sections 302, 120B and 212 read with Section 34 of the Indian Penal Code (for short "IPC").

3. In so far as the merits of the case, this Court has already taken a view that the applicant has no case on merit. However, as per the last order of this Court, 19 witnesses were examined in addition to the 5 witnesses already examined. The learned trial Court was directed to conclude the trial within a specific period. However, considering the serious controversy and habit of not turning a single stone unturned, the trial could not be concluded within the time frame.

4. This Court (Coram: Sanjay A. Deshmukh, J.), by order dated 23.01.2024 again rejected the bail application. There were allegations about district administration about the transfer of the Judicial Officers and allotment of the work to another Court. To avoid delay on the part of the Judicial District administration, this

Court also directed the learned Principal District and Sessions Judge, Ahmednagar, to transfer the case from one court to another court or he himself may conduct the case.

5. The Court reminded the district judiciary that sessions means once the trial is commenced it shall not be stopped till its end. It was further observed that therefore, the concerned Court shall conduct the case on day to day basis except the contingency arises and in that case he should record the reasons. It was observed in paragraph No.16 of order dated 23rd January, 2024, which reads thus;

“16. It is expected that the trial court shall conclude recording of the oral evidence of all witnesses by the end of April 2024 and thereafter, proceed further with the trial so that it shall be concluded before 31.08.2024. If the trial is not concluded within remaining seven months, all concern including the trial court to note that this court will have no option than to release the applicant on bail. The applicant may move this Court for bail on the ground of delay and right to speedy trial.”

6. The submissions of the respective learned counsels reveal that from the date of the above order, around 19 witnesses were examined. In all 24 witnesses have been examined. Both parties are blaming each other for either not calling the witnesses in time or not cross-examining the witnesses on the ground that the undertrial prisoners were not produced before the Court. It is also

a matter of record that the lawyers representing the present applicant and other undertrial prisoners flatly denied the cross-examination of the witnesses on the ground that the accused was not produced from jail. It is also one of the grounds that one of the witnesses, Prosecution Witness No.22 was not appearing for evidence before the Court for his cross-examination. The endeavors of the trial Court must be appreciation, though his cross-examination was not completed, he proceeded to examine further witnesses.

7. The report of the learned A.P.P. appearing for the State in the trial Court gives an account of the stages and the way of attempting to conclude the trial as early as possible. In sum and substance, he would submit that sometimes the trial was adjourned due to transfers of the Judicial Officer and there was a little bit of delay in the execution of administration orders.

8. He tried to bring to the notice of this Court that sincere attempts were made to respect the order of this Court and there was no deliberate delay. The matter is complicated. So examination of witnesses is essential. Since the case is based upon the conspiracy, around 13 to 14 panchnamas are to be proved and the examination of panch witnesses is essential. Some of the eyewitnesses are also to be examined. It is also reported that on a few dates, the witnesses were present in the Court.

However, the counsel for the accused sought adjournment. Hence, this witness could not be examined. Considering the copies of Roznama placed on record by the learned counsel for the applicant, it cannot be said that there was absolutely no progress in the trial and no sincere efforts have been made by the trial court and the prosecution. It seems to be a serious contest between the accused and the victim. Hence, they are not leaving a single stone unturned.

9. The learned counsel for the applicant has vehemently argued that there is a series of the judgments of the Honourable Supreme Court on a snail's speed trial and a right to a speedy trial. He has specifically argued that the applicant had at no point in time protracted the trial deliberately. When the accused could not be blamed for the delay in the trial he should be granted bail.

10. To bolster his arguments, the learned counsel for the applicant has relied on ***Manish Sisodiya versus Director of Enforcement, Criminal Appeal No. of 2024 [Arising out of SLP (Criminal) No.8781 of 2024] dated August 09, 2024.***

In ***Manish*** (supra), the Honourable Supreme Court in paragraph Nos.46 and 47 observed thus;

"46. It could further be seen that, though it has been submitted on behalf of the ED that hundreds of applications have been filed for supply of "un-relied upon documents", the record would not substantiate the said

position. Though various applications have been filed by different accused persons, insofar as the present appellant is concerned, he has filed only 13 applications in the CBI matter and 14 in the ED matter. It would reveal that some of the applications are for seeking permission to meet his wife or permission to file vakalatnama, to put signature on the documents, seeking permission to sign a cheque etc. Most of the applications are for supply of missing documents and legible copies under Section 207/208 Cr.P.C. Some of the applications are for inspection of the "un-relied upon documents". It is pertinent to note that all these applications have been allowed by the learned trial court. It is further pertinent to note that some of these orders were also challenged before the High Court wherein stay was granted. However, a statement was made on behalf of the prosecution before this Court when the first order was passed that the said petitions filed under Section 482 Cr.P.C would be withdrawn. The said statement is recorded in paragraph 27 of the first order of this Court. We may state that, when we specifically asked the learned ASG to point out any order wherein the learned trial judge found any of the applications of the appellant to be frivolous, not a single order could be pointed out.

47. *In that view of the matter, we find that the finding of the learned trial judge that it is the appellant who is responsible for delaying the trial is not supported by the record. The learned Single Judge of the High Court endorses the finding of the trial court on the ground that the accused persons have taken three months' time from 19th October 2023 to 19th January 2024 for inspection of "un-relied upon documents" despite repeated directions*

from the learned trial court to conclude the same expeditiously. It is to be noted that there are around 69,000 pages of documents involved in both the CBI and the ED matters. Taking into consideration the huge magnitude of the documents involved, it cannot be stated that the accused is not entitled to take a reasonable time for inspection of the said documents. In order to avail the right to fair trial, the accused cannot be denied the right to have inspection of the documents including the "un-relied upon documents".

11. As regards this, the learned A.P.P. has submitted that this was the case, wherein charge was not framed, though the time was granted to commence the trial. He submits that in this case the bail was granted on the ground that there were no expectations of a speedy trial on its fact. The facts of this case at hand are altogether different. After the direction of this Court, there was material progress in the trial. The trial was posted day-to-day. He would submit that in this case material is before the Court, that when the witnesses were present, the counsel for the undertrials accused flatly denied proceeding with the matter only for the reason that the accused were not been produced from jail. Had the accused interested to conclude the trial speedily, he would have allowed his lawyer to proceed his trial by attending the court through video conferencing. However, the counsel for the accused denied to cross-examine the witnesses for not producing the applicant physically before the Court. He would submit that it

happened many times. Video conference facility is made available to each Court. The object behind such a facility was to expedite the trials, avoid the burden of the exchequer, find a solution to the shortage of police guards and utilize and enhance the efficiency of the Judicial Officers. He also added in the above case, the maximum punishment was only seven years. Probably, Section 436-A of the Criminal Procedure Code might have been borne in mind. He argued that the object of speedy trial is to be understood between the lines. Such case laws cannot be relied upon as a straight jacket formula to seek bail on indefinite incarceration.

12. The learned counsel for the applicant further relied on the case of ***Indrani Pratim Mukerjea versus Central Bureau of Investigation & Anr., Petition(s) for Special Leave to Appeal (Crl.) No(s).1627/2022*** (*Arising out of impugned final judgment and order dated 16-11-2021 in CRLBA No.986/2020 passed by the High Court of Judicature At Bombay*), dated 18.05.2022. In this case, around 237 witnesses were cited, out of which 68 were examined. The Presiding Officer was on a long leave. The accused was incarcerated for six and a half (6½) years. In this case, the Honourable Supreme Court did not comment on the merits of the case observing that it may be detrimental to the interest of either the prosecution or the defence. The Honourable Supreme Court

granted bail by observing that taking into account the fact that the petitioner has been in custody for 6½ years and even if 50% of the remaining witnesses are given up by the prosecution, the trial will not be complete soon. Again, the Honourable Supreme Court considered peculiar facts of the case and the possibility of conclusion of the trial within a reasonable period.

13. The learned counsel for the applicant has further relied on the case of ***Rup Bahadur Magar @ Sanki @ Rabin vs. State of West Bengal, Criminal Appeal No.4144 of 2024*** [Arising out of S.L.P. (Criminal) No.11589 of 2024] dated 04.10.2024. In this case, also the accused had undergone incarceration for a period of 2 years and 9 months. Initially, 72 witnesses were named, out of which only 3 were examined. The statement was made before the Court that the witnesses would be brought down to 22 to 24. The Honourable Supreme Court recorded the findings that the trial has been delayed considerably. When there are no antecedents, there was no reason for the High Court to deny the bail. Under these premise the bail was granted.

14. The learned counsel for the accused tried to argue that once this court directed the trial Court to conclude the trial within a time frame and expressed an opinion that if the trial is not concluded in time, the Court will have no option except for granting the bail to the applicant, now the Court could not deny him bail.

15. In the case of **Rup Bahadur** (supra), the Honourable Supreme Court has referred to the judgment, in the case of **High Court Bar Association, Allahabad vs. State of U.P. & Ors., (2024) 6 SCC 267**, in which the Constitution Bench observed that the orders directing the disposal of trials within a time schedule, put the undue pressure on the Trial Courts which are already flooded with a lot of work. Unless the factual situation is extraordinary and exceptional, the High Courts should refrain from passing such orders.

16. By stretch of imagination it could be said that if the trial is not concluded in a time frame as per the Court's order, the applicant gets a right to bail. If such an interpretation is accepted there would be havoc in society and the provisions granting bail on the basis of facts, the gravity and brutality and the effect of such crimes on society would be frustrated. That apart, the doctrine of 'the change in the circumstances' would also become redundant. It is made clear that the Court does not intend to say that such orders of the Higher Court should not be taken seriously. Such orders must be respected. That apart, the orders of the High Courts without recording the reasons for extraordinary factual situations passing such orders are held contrary to the law laid down in the case of **High Court Bar Association** (supra).

17. The learned counsel for the applicant also relied on the case

of ***Mukesh Kumar vs. The State of Rajasthan and Anr.***, in Petition for Special Leave to Appeal (Crl.) No.11714 of 2022 [Arising out of impugned final judgment and order dated 27-09-2022 in SBCRBCA No.96 of 2021 passed by the High Court of Judicature for Rajasthan at Jaipur] decided on 15.02.2023.

18. In the above case, the accused were facing trial for the charge under Sections 143, 307, 452, 323, and 504 of the IPC. The role attributed to the accused were also discussed. There were cross complaints and both side persons suffered injuries It was the case of a single blow on the head of the deceased with a danda (Bamboo). The applicant/accused was arrested on 08.06.2020 and he was released by the trial Court on regular bail on 22.06.2021. However, the High Court had cancelled his bail by order dated 27.09.2022. After the cancellation of bail by the High Court, he again surrendered on 16.11.2022.

19. The Honourable Supreme Court considered his incarceration for more than 14 months, examining the crucial witnesses and no likelihood of tampering with the evidence and consideration time to conclude the trial, again in this case the Hon'ble Supreme Court considered the factum of the case and in this peculiar facts, granted bail expressing opinion that trial may take its time. However, there was no data before the Hon'ble Supreme Court, on how many witnesses remained were cited and remained to be cited. In the peculiar circumstances the discretion was exercised.

20. The learned counsel for the applicant also relied on the case of the Bombay High Court in ***Shishirkumar Gopalchandra Padhy vs. State of Maharashtra***, Bail Application No.2145 of 2023, dated 12.09.2023. In the earlier of this Court this case was considered and bail was refused. In this case, the applicant was arrested on 18.01.2016. He was facing the charges of Sections 302, and 452 of the IPC. He was incarcerated from the date of his arrest. Five witnesses were examined and ten were intended to be examined. The trial was directed to conclude within six months. The Court has observed and specifically directed the concerned Judge shall endeavor to fix the trial on a day-to-day basis and conclude the same. Upon the order being passed, the trial Court took note of the direction issued by the High Court dated 19.10.2022 and fixed the trial not on day-to-day basis, but spread over by a period of about a week or so. The counsel for the applicant had placed the Roznama of the proceedings before the Court. The Court recorded remark, that on most of the occasions the witnesses are absent and on some of the remaining dates when the witness was present, the accused was not produced from jail custody. The net result of the fact, the trial has not progressed at all and it remained at standstill at the same stage where it was on 30.09.2022, merely a year after the order was passed. The Bombay High Court considered the expectancy of the life of the trial and his incarceration for almost seven years. The Court also

observed that not a single positive step was taken by the in-charge Court to ensure the presence of witnesses and also to secure the presence of the accused on the concerned dates. Some adverse observations were recorded against the judicial officer. Since not a single witness was examined for one year, the Court expressed its inability to conclude as to who should be blamed. Under this scenario, the Court granted bail.

21. The learned counsel for the applicant also relied on the case of ***Rabi Prakash versus The State of Odisha, 2023 LiveLaw (SC) 533***. In that case, also the accused was behind the bar for more than three and a half years and only 1 out of 19 witnesses were examined. The conclusion of the trial will, thus, take some more time. Under this premise, the Court granted bail.

22. The learned counsel for the applicant relied on the case of ***Modh. Enamul Haque vs. Directorate of Enforcement, Criminal Appeal No.3984 of 2024 (@ SLP(CRL.) No.11129 of 2024, dated 23.09.2024***. In that case also, the accused was incarcerated for a period of nearly four years and the trial was not commenced. Hon'ble Supreme Court granted bail to the accused not only on the grounds of parity but also for the reason that the trial is yet to commence and the applicant/accused was incarcerated for more than two and a half (2½) years.

23. The learned counsel for the applicant relied on the following orders of this Court:-

- (i) *Bhagwan Bapurao Parve vs. The State of Maharashtra, Bail Application No.1196 of 2024, dated 09.09.2024;*
- (ii) *Mohan Suresh Lashkare and others vs. The State of Maharashtra, Bail Application No.1681 of 2024, dated 09.10.2024;*
- (iii) *Vijay Balasaheb Kharde vs. vs. The State of Maharashtra, Bail Application No.1502 of 2024, dated 10.10.2024.*

24. In **Bhagwan** (supra), the directions of this Court have not been strictly followed. The case was listed for the recording of evidence. In sum and substance, the trial was not commenced and in that peculiar circumstances, bail was granted.

25. In **Mohan** (supra), the accused/applicants No.3 and 5 were in jail since 2013, applicant No.2 was in jail since 2015 and applicants No.1 and 4 were in jail since 2018. In this peculiar circumstance, though the case was posted for the recording of the statement under Section 313 of the Cr.P.C., the bail was granted.

26. In **Vijay** (supra), the accused were languishing in jail since 2020 and the charges were not framed. Under that premise, the bail was granted.

27. Lastly, the learned counsel for the applicant relied on the

case of **Javed Gulam Nabi Shaikh versus State of Maharashtra, Criminal Appeal No.2787 of 2024** (*Arising out of SLP (Crl) No.3809 of 2024*), dated 03.07.2024. In that case, also, the accused was apprehended on 09.02.2020 and since then he was behind bar. The crucial question, in that case, was, whether Article 21 of the Constitution would apply only to general offences under the IPC or also to the offences under the Special Act. The Honourable Supreme Court answered that Article 21 of the Constitution applied irrespective of the nature of the crime. In that case, the charges were not framed. Then, the Honourable Supreme Court passed the order. Under this premise, the Court granted the benefits to the accused of Article 21 of the Constitution of India and directed to release him.

28. The learned A.P.P. and the learned counsel for the victim have vehemently opposed the application and mainly on the ground argued that in most of these cases there was absolutely no progress in the trial and nor the charges were framed. In one of the cases, **Shishirkumar** (*supra*), the trial was not opened and concluded within a specific time though there were directions from the High Court to list the case for hearing day-to-day.

29. The learned A.P.P. submits that the right to a speedy trial is to be protected and bail for indefinite incarceration should be granted. In the cases where there is no hope of concluding the trial

within a reasonable time, and particularly, for a long period there was no progress, even if the charges were not framed, granting bail is justifiable. In some of the cases, the Honourable Supreme Court has conceded the large number of witnesses and the expected time to conclude the trial. A bulky chargesheet was also considered. They would submit that this is not the case like. The charges were framed and to date, 24 witnesses have been examined. The orders of this Court to expedite the trial was followed and attempts to conclude the trial were sincerely made. They also vehemently argued that the accused are also equally responsible to protract the trial. The accused or their counsels did not support the Court to proceed with the trial by appearing through video conferencing. Sometimes, the witnesses were present, but due his non production of the jail and the counsel for him, the matter could not be proceeded. The direction of fixing the trial on day-to-day basis was strictly followed by the trial Court, though there were transfers of Judicial Officers and time was spent in transferring the matter to the newly posted Judicial Officer. This is not the case only to blame the prosecution and the Court and also equally the accused.

30. The learned A.P.P. expressed the opinion that if the trial is listed day-to-day, it may be concluded at least within five to six months, subject to the cooperation of the accused and do not insist for his physical presence on each date.

31. The learned A.P.P. relied on the case of ***Amit Kumar vs. Union of India, The Gauhati High Court, Case No. Bail Application No.1044 of 2024, dated 26.07.2024***, in which the Hon'ble Supreme Court has observed, instead of incarceration of the accused, the benefit of incarceration in jail should not be granted for the offences which are grave and serious. 27. In the above case the case of ***Satyajit Banerjee Vs State of West Bengal and ors (2005) 1 SCC 115*** was referred to. In this case, the Hon'ble Supreme Court pointed out the subtle distinction between a Speedy trial and a fair trial. It has been observed that "Speedy trial" and "fair trial" to a person accused of a crime are integral parts of Article 21. There is, however, a qualitative difference between the right to speedy trial and the accused's right to a fair trial. Unlike the accused's right to a fair trial, deprivation of the right to a speedy trial does not *per se* prejudice the accused in defending himself. The right to a speedy trial is in its very nature relative. It depends upon diverse circumstances. Each case of delay in the conclusion of a criminal trial has to be seen in the facts and circumstances of such case. A mere lapse of several years since the commencement of prosecution by itself may not justify the discontinuance of prosecution or dismissal of indictment. The factors concerning the accused's right to a speedy trial have to be weighed vis-a-vis the impact of the crime on society and the confidence of the people in the judicial system. A

speedy trial secures the rights of an accused but does not preclude the rights of public justice. The nature and gravity of crime, persons involved, social impact and societal needs must be weighed along with the right of accused to a speedy trial and if the balance tilts in favour of the former the long delay on conclusion of criminal trial should operate against the continuation of prosecution and if the right of the accused in the facts and circumstances of the case and exigencies of situation tilts in his favour, the prosecution may be brought to end. It was also observed that from the principles laid down in many authorities of this Court, it is clear as crystal that no time limit can be stipulated for the disposal of the criminal trial. The delay caused has to be weighed on the factual score, regard being had to the nature of the offence and concept of social justice and the cry of the collective.

32. The learned A.P.P. and the learned counsel for the victim have vehemently argued that since the witnesses are threatened, they are afraid of coming to the Court. P.W.No.22 had an apprehension. Hence, the Court granted him police protection. The family members of the applicant are threatening the witnesses. Therefore, it would not be safe to grant him bail.

33. Per contra, the learned counsel for the applicant has vehemently argued that many cases are pending against

P.W.No.22. So, probably he might have not been attending the Court of apprehension of his arrest. No threats, as such, were given. However, to create a ground to oppose bail application, false non-cognizable cases were registered.

34. The offence of this case was of murder. It is a grave offence. The serious allegations levelled against the accused were weighted in all his bail applications and he was refused bail. The conduct of the applicant not supporting the system has also been observed above. The facts of the case could be summarized that after this Court had directed to expedite the trial, around 19 witnesses were examined and 5 witnesses were already examined. To date, 24 witnesses have been examined. A large number of 19 witnesses were examined and only a few formal witnesses are to be examined. There are two panch witnesses to one panchnama. The second one is to be examined only if the first is hostile. If the first panch supports the prosecution, the second panch witness may be dropped. So that may reduce the number of witnesses. That apart, the trial is not stalled. It was listed today for cross-examination of the witnesses. So, it cannot be said that there was no progress in the trial at all. The learned trial Court and the prosecution are sincerely attempting to conclude the trial, but due to administrative difficulties, the Court could not proceed with the matter. For administration difficulties, no one should be blamed. Transfer and new posting are the regular processes of the system.

So, when the matters were transferred some time would be spent.

35. Considering the facts of this case and the material progress in the trial, the Court is of the opinion that the case laws relied upon by the learned counsel for the applicant, would not assist him. There was satisfactory progress in the trial as per the directions of this Court. Hence, it cannot be stated that the applicant's right to a speedy trial has been seized and there are no hopes of disposal of the trial in the near future.

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

37. The Criminal Application No.4333 of 2024 stands disposed of.

(S. G. MEHARE)
JUDGE

rrd