



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 BAIL APPLICATION NO. 2036 OF 2023

Bal @ Balasaheb Jagannath Bhothe
VERSUS
The State Of Maharashtra

...
Advocate for Applicant : Shri R.S.Deshmukh, senior advocate with
Miss. Rakshanda Jaiswal i/b Mr. Nitin Bhavar Patil
Public Prosecutor/APP for Respondent: Mr. A.B Girase with Mr.
Satish A. Gaikwad
Advocate to assist the A.P.P. : Mr. N. B. Narwade
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CORAM : SANJAY A. DESHMUKH, J.
DATED : 23rd JANUARY, 2024.

PER COURT :-

1. This is second bail application moved for grant of regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.").
2. The applicant is arrested in crime No. I-0478 of 2020 registered with Supa police station, Tq. Parner, district Ahmednagar for the offences punishable under Sections 302 r.w. 34 of I.P.C.. This application is filed on the ground of delay caused for trial, as it is alleged that the Sessions Case No. 156 of 2021 is being tried with a snail-speed, even though directions issued by this Court for two times i.e. earlier for 6 months and thereafter for 9 months period for conducting the said trial expeditiously. The last order directing expeditious hearing was passed on 30.11.2023 by this Court.

3. Mr. Rajendra Deshmukh, learned senior advocate for the applicant submitted that the trial is not conducted with reasonable speed even though there are directions of this Court for two times. Shri Umeshchandra Yadav, appointed as special public prosecutor in that case continuously remained absent and the trial is held up. He pointed out the daily sheet showing that the special public prosecutor is continuously absent for many dates. He also pointed out the depositions of the witnesses and submitted that even they are not cross examined on behalf of this applicant as there is no material evidence against him. He lastly submitted that evidence of only seven witnesses is over. However, there is nothing incriminating against this applicant to proceed further with the trial. He therefore, prayed to grant bail, in view of law laid down in the following authorities by the Hon'ble Supreme Court and by this Court:-

- I. **Indrani Pratim Mukerjea vs. Central Bureau of Investigation and another**, decided in Petition (s) for Special Leave to Appeal (Crl.) No(s). 1627 of 2022 dated 18.5.2022. In which it is held that admittedly, the petitioner has been in custody for 6½ years. We do not intend to comment on the merits of the case which might be detrimental to the interest of either the prosecution or the defence. 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 complete soon, we are of the considered view the petitioner is entitled to be released on bail.

- II. **Mukesh Kumar vs. The State of Rajasthan and Anr.** in Petition for Special Leave to Appeal (Crl.) No. 11714 of 2022 decided on 15.02.2023, wherein in para 8, it is held that

“8. Suffice to say that the petitioner has been in custody for more than 14 months, the crucial witnesses have since been examined and there is no likelihood of tampering with the evidence. Even otherwise also, the witnesses are close family members of both sides, hence there is no likelihood of winning over the witnesses.”

- III **Rabi Prakash vs. The State of Odisha**, 2023 LiveLaw (SC) 533: Special Leave to Appeal (Crl.). In para 3 and 4, it is held that ;

“3) We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

4) As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

- IV. **Shishirkumar Gopalchandra Padhy vs. State of Maharashtra**, decided by this Court on 12.9.2023 in bail application No. 2145 of 2023. In para 5 and 7 it is held that;-

“5. In the result, though the learned APP state on instructions that there are approximately 6 to 10 witnesses which are to be examined, with the snail-speed progress of the trial for last one year, I am unable to comprehend as to who should be blamed.

7. Repeatedly, constitutional courts have identified right of an accused for a speedy trial, which is envisaged under Article 21 of the Constitution and no explanation being found from any of the institution, whether it is the Prosecuting Agency or the Trial Court, the only way to assure him, of his right, is a decision to release him on bail.”

V. **Mayur Balasaheb Harkal vs. The State of Maharashtra and another**, decided by this Court on 11.01.2024 in bail application No. 2232 of 2023. In which in para 4 it is held that

“4. Perused the charge-sheet and the order passed by this Court in which co-accused were released on bail and also the order passed by the Hon'ble Supreme Court in which the remaining accused were released on bail. More than six years are over, the trial is not concluded and the evidence of only two witnesses are recorded. The applicant has roots in the society. The applicant has no criminal antecedents. The applicant will not flee away from trial. At the most, the applicant can be directed that he shall not enter in Newsa Taluka till the conclusion of the trial except the dates fixed by the learned trial Court for hearing of the case. The application, therefore, deserves to be allowed on certain conditions.”

4. Mr. Girase, learned Public Prosecutor with Mr. Gaikwad, learned A.P.P. for the State and Mr. Narwade, learned advocate assisting to prosecution strongly opposed the application. They

contended that in view of the order passed by this Court on 18.01.2023 in this bail application, the special Public Prosecutor Shri Yadav has tendered his resignation and now the Chief Public Prosecutor of Ahmednagar district is ready to conduct the case within a time frame of remaining seven months. He pointed out the daily sheet, showing resignation of special public prosecutor Shri Yadav and also the fact that some times the case is prolonged because of the applicant-accused or co-accused. He also pointed out that the applicant is prosecuted for making phone calls to the witnesses from jail under Section 42, 45 of the Prisons Act r.w. 34 of I.P.C.

5. Learned Public prosecutor is relying upon the case of ***Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav and another, reported in (2004) 7 SCC 528***. In the said case, in para 14 and 18, it is held as under:-

“14. We have already noticed from the arguments of learned counsel for the appellant that the present accused had earlier made seven applications for grant of bail which were rejected by the High Court and some such rejections have been affirmed by this Court also. It is seen from the records when the seventh application for grant of bail was allowed by the High Court, the same was challenged before this Court and this Court accepted the said challenge by allowing the appeal filed by the Union of India and another and cancelled the bail granted by the High Court as per the order of this Court made in Criminal Appeal No.745/2001 dated 25th July, 2001. While cancelling the said bail this Court specifically held that the fact that the present accused was in custody for more than

one year (at that time) and the further fact that while rejecting an earlier application, the High Court had given liberty to renew the bail application in future, were not grounds envisaged under Section 437(1)(1) of the Code. This Court also in specific terms held that condition laid down under Section 437 (1)(1) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail. We agree that a conclusive finding in regard to the points urged by both the sides is not expected of the court considering a bail application. Still one should not forget as observed by this Court in the case *Puran Vs. Rambilas and Another* (supra) "Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated"

6. Learned public prosecutor submitted that the trial can be conducted expeditiously as early as possible as per the directions of this Court within remaining seven months. He lastly prayed to reject the application.

7. Nobody will dispute the ratios laid down in the aforesaid precedential law cited by both the sides. However, it is well settled that the facts of the cases are always decisive and different.

8. The applicant has not challenged the order by which the trial was expedited by this Court. The applicant's earlier bail application was rejected by this court after considering all factual aspects on merits. Therefore, this Court cannot enter into the factual aspects and the merits of the case, because it would be against the judicial discipline when the earlier application is decided on merits.

9. The applicant is in jail for last 2½ years. From the Roznama/ daily sheets submitted by both the sides, it is revealed that the special public prosecutor did not follow the direction of this Court but remained absent for conducting the trial. The learned Judge of the trial court also did not insist him for conducting the trial expeditiously as per the directions of this Court which revealed from the daily sheet itself. The Sessions Court and Additional Sessions Courts must bear in mind that Sessions case means once it is started it shall not be stopped unless it is finalized. They would have complained to the appointing authority of special public prosecutor Shri Yadav, about his non co-operation. Therefore, right to speedy trial is crystallized as fundamental right by the precedential law, cited supra. It was also duty of the concerned court to communicate that

fact to the Law and Judiciary and the Home Departments, which are appointing authorities of special public prosecutor Shri Umeshchandra Yadav, who is absent for months together for hearing of the trial from 15.1.2024 to 23.01.2024 and prior to that also. When this court directed the Additional Chief Secretary of Home department of State of Maharashtra and the Secretary, Law and Judiciary department about that he submitted resignation. Learned public prosecutor submitted that now Shri Yadav has resigned and that the chief Public Prosecutor will conduct the trial speedily as per the directions of this Court.

10. In the background and facts and circumstances, as per the direction of this Court, within the remaining period of 7 months, the trial must be concluded. Now the Presiding Officer, seized with the said trial is going to retire on 31.01.2024.

11. Generally, the District Judge-1 and Additional Sessions Judge is burdened with workload of some special cases and administrative work. However, specific directions need to be given to the Principal District and Sessions Judge, Ahmednagar for conducting the trial as per directions of this Court within seven months. Therefore, the bail cannot be granted to the applicant as there are seven remaining months to conclude the trial.

12. The learned Principal District and Sessions Judge,

Ahmednagar is directed to transfer the said case from that Court to another Court or he himself may conduct the case. The concerned Judge to whom the case would be transferred shall conduct it by keeping in mind that it is expedited Sessions Case. Needless to mention that the session means, once it is started it shall not be stopped till its end. Therefore, the concerned Judge shall conduct the case on day to day basis, except if any contingency arises and in that case he shall record the reasons in daily sheet.

13. The office of the Chief Public Prosecutor, Ahmednagar is also directed to conduct the case on day to day basis and cooperate the concerned Court.

14. The jail authority, Ahmednagar is also directed to produce the accused whenever the dates are scheduled and particularly when the presence of the accused is necessary, without fail.

15. The defence lawyers are also expected to co-operate the trial court and not to pray for adjournment during trial to conclude it within time frame.

16. It is expected that the trial court shall conclude recording of 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.

17. For aforesaid reasons, the application for granting bail on the ground of delay caused for trial is rejected.

18. The Registrar (Judicial) of this court is directed to communicate this order to the Principal District and Sessions Judge, Ahmednagar to the Chief Public Prosecutor, Superintendent of Jail, Ahmednagar etc.

19. The Principal District and Sessions Judge, Ahmednagar to report the compliance.

(SANJAY A. DESHMUKH, J.)

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