



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

983 BAIL APPLICATION NO. 2137 OF 2023

SURESH NAVNATH CHAVAN
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Ghanekar Nilesh S.
APP for Respondent/State : Mrs. Pratibha J. Bharad
...

WITH
CRIMINAL APPLICATION NO. 4501 OF 2023
IN BA/2137/2023

SUNIL RAMRAO NALAWADE
VERSUS
SURESH NAVNATH CHAVAN

...
Advocate for Applicant : Mr. Kuldeep Subhashrao Patil
APP for the State : Mrs. Pratibha J. Bharad
Advocate for Respondent : Mr. Ghanekar Nilesh S.
.....

CORAM : SANJAY A. DESHMUKH, J.
DATED : 15th MARCH, 2024.

PER COURT :-

1. Criminal Application No. 4501 of 2023 is filed for assist to prosecution. For the reasons stated in the application, the application is allowed.

2. In Bail Application No. 2137 of 2023, the applicant is seeking bail under section 439 of the Criminal Procedure Code, 1973 (for short, "Cr.P.C."). The applicant has been arrested in connection

with crime No. 292 of 2020 registered with Khultabad Police Station, Taluka Khultabad, District Aurangabad, for the offences punishable under sections 304-b, 306, 498-A, 323, 504 and 506 read with section 34 of the Indian Penal Code.

3. The applicant's earlier application was rejected by this Court on merit by passing order in Bail Application No.1380 of 2020 on 2nd December, 2020. The applicant was released on Covid bail as per the directions of the Hon'ble Supreme Court and recommendation of the High Power Committee. Thereafter, the applicant was directed to surrender himself as per the directions of the Hon'ble Supreme Court in Suo-Moto Writ Petition (C) No.1 of 2020 reported in 2023 Live Law (SC) 238. The petitioner instead of surrendering applied before the trial Court for granting bail on 03.01.2023. The prayer was rejected on 06.11.2023 and the applicant was directed to surrender on or before 21.11.2023, which was extended upto 12.12.2023. That application was rejected on 12.12.2023. On 13.12.2023 i.e. next day, the applicant surrendered before the trial Court. Since then he is behind bars. The applicant has prayed for bail in view of the directions of the Hon'ble Supreme Court in Suo-Moto Writ Petition (C) No.1 of 2020. The para 4 of the said judgment reads as under :-

“4. In view of the above, we allow the present application with an observation and direction that all those under trials/convicts who have been released on Emergency Parole/Interim Bail pursuant to the recommendation of the High-Powered Committee, in compliance of the Orders dated 23.03.2020, 07.05.2021 and 16.07.2021 passed by this Court in Suo Moto Writ Petition No.01/2020 have to surrender before the concerned prison authorities within 15 days.

The present order be intimated to the concerned Accused/inmates by the concerned jail authorities that they have now to surrender within the period of 15 days. However, it is observed that thereafter after the concerned prisoners/inmates surrender before the concerned prison authorities it will be open for the concerned undertrials to pray for bail before the competent court and their applications be considered in accordance with law and on its own merits. Similarly, after the surrender by the concerned convicts who are released on Emergency Parole it will be open for them if so advised to pray for suspension of sentence before the concerned Court in their appeals which might have been pending which also may be considered in accordance with law and/or on merits.

With this the present application stands disposed of.”

4. The learned advocate for the applicant submits that in view of the directions of the Hon'ble Supreme Court, the applicant had preferred this application. He further submitted that there is

special Court for woman atrocities for trying such cases, the said Court is burdened with the cases. Now the Court is on leave for two months. The applicant has roots in the society. He has not misused the liberty which was granted during his Covid bail. He, therefore, prayed for granting bail.

5. Learned A.P.P. for the respondent-State and learned advocate assisting to the prosecution have strongly opposed the application and submitted that there is no change in the circumstances and the applicant has to move before the trial Court for granting bail, instead of that he had filed this application before this court, which is not maintainable. Mr.Patil, the learned advocate for the informant strongly opposed the application and submitted that this Court cannot decide this application as if it is appeal against the order rejecting the bail. He further submitted that there is no change in the circumstances. He, therefore, prayed to reject the application.

6. Perused the papers of investigation. No doubt earlier application for granting bail was rejected by this Court before Covid-19 epidemic. This Court is aware about the cardinal principle of judicial discipline. However, at the same time, the court has to consider different fact situation and particularly the observations and directions of the Supreme Court in para no.4 in *Suo Moto Writ*

Petition (C) No.01/2020 (cited supra) that such undertrials can pray for bail and only issue is, whether after surrender the applicant has to again apply freshly for bail before the trial Court or not. His conduct show that the applicant surrendered before the trial Court on 13.12.2023 and then the trial Court rejected his bail application on 12.12.2023. The valuable right of the accused for speedy trial is guaranteed under Article 21 of the Constitution of India. Though the charge is framed no any witnesses is examined. There is no hope that the trial would conclude as early as possible in near future. The special Court for trying the cases of woman atrocities is burdened with the heavy load. The trial Court is on leave for some months. The applicant has roots in the society, his conduct shows that he did not jump the bail or commit any breach of the conditions of bail. His presence for trial can be secured. The trial will take long period. Considering all these peculiar facts and circumstances and the fundamenta principle for granting bail i.e. 'bail is rule and jail is exception', the application deserves to be allowed on certain conditions. Hence, the following order.

O R D E R

- I. Application is allowed.
- II. The applicant in connection with crime No. 292 of 2020 registered with Khultabad Police Station, Taluka Khultabad, District Aurangabad, for the offences punishable under

sections 304-b, 306, 498-A, 323, 504 and 506 read with section 34 of the Indian Penal Code be released on bail on furnishing personal bond of Rs.50,000/- with one surety of the like amount on following conditions:-

- a) The applicant shall not pressurize the prosecution witnesses and tamper with the prosecution evidence in any manner.

(SANJAY A. DESHMUKH, J.)

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