

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.733 OF 2024

Imran Shakil Naikwadi @ Imaya ... Applicant
Bhai

V/s.

The State of Maharashtra ... Respondent

Mr. Sandeep Karnik, for the applicant.

Mr. Pankaj Deokar, APP, for the Respondent/State.

CORAM : ANIL S. KILOR, J.

DATE : 21ST AUGUST, 2024.

PC:

1. Heard.
2. By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No.159 of 2020, registered with Gokul Shirgaon Police Station, Kolhapur, for the offences punishable under Sections 394, 307, 452, 354, 323, 504, 506, 427, 120(B) of the Indian Penal Code, Section 3(1) (ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999, Section 5, 27 of the Indian Arms Act and Section 142 of the Maharashtra Police Act.
3. In the present matter the applicant is in jail from last 4 years. The minimum punishment under MCOC, Act is 5 years. Till date as far as

the trial is concerned, the charge is not framed. Furthermore, there are about 79 witnesses. Thus, there is no end of the trial in sight.

4. This Court granted bail to the co-accused Vinayak Mohan Patil. This Court while granting bail to this co-accused also taken into consideration the antecedents against the said co-accused. No doubt there are antecedents against the applicant, some of which are common with the syndicate.

5. In the case of *'Sheikh Javed Iqbal @ Ashfaq Ansari @ javed Ansari vs. State of Uttar Pradesh'*¹, the Hon'ble Supreme Court of India has observed thus:

“23. This Bench in a recent decision dated 03.07.2024 in Javed Gulam Nabi Shaikh Vs. State of Maharashtra, Criminal Appeal No. 2787 of 2024, has held that howsoever serious a crime may be, an accused has the right to speedy trial under the Constitution of India. That was also a case where fake counterfeit Indian currency notes were seized from the accused-appellant. He was investigated by the National Investigating Agency (NIA) under the National Investigating Agency Act, 2008 and was charged under the UAP Act alongwith Sections 489B and 489C IPC. He was in custody as an undertrial prisoner for more than four years. The trial court had not even framed the charges. It was in that context, this Court observed as under:

9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

¹ (2024) SCC Online SC 1755

23.1. After referring to various other decisions, this Court further observed as follows:

19. 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.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.

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26. *Angela Harish Sontakke Vs. State of Maharashtra* is a case where the accused-appellant was charged under various provisions of the UAP Act as well as under the

IPC. He sought for bail. This Court observed that, undoubtedly, the charges are serious but the seriousness of the charges will have to be balanced with certain other facts like the period of custody suffered and the likely period within which the trial can be expected to be completed. In that case, it was found that the appellant-accused was in custody since April, 2011 i.e. for over five years. The trial was yet to commence. A large number of witnesses were proposed to be examined. It was in that context that the appellant-accused was directed to be released on bail.

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30.1. Thereafter, this Court held as follows:

7.1. We are dealing with a case of the accused whose guilt is yet to be established. So long as he is not held guilty, the presumption of innocence is applicable. He cannot be deprived of all his rights guaranteed under Article 21.....

32. This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of

constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.”

6. Thus, considering the above referred observations of the Hon’ble Supreme Court of India and the fact that the applicant is in jail from last 4 years and there is no end of the trial in sight, I am of the opinion that the applicant is entitled for grant of bail with certain stringent conditions.

7. In the circumstances, though the learned APP is strongly opposing the application, I pass the following order:

ORDER

- (i) Criminal Bail Application is allowed and disposed off;
- (ii) It is directed that the applicant shall be released on bail in Crime No.159 of 2020, registered with Gokul Shirgaon Police Station, Kolhapur, for the offences punishable under Sections 394, 307, 452, 354, 323, 504, 506, 427, 120(B) of the Indian Penal Code, Section 3(1) (ii), 3(2), 3(4)

of the Maharashtra Control of Organised Crime Act, 1999, Section 5, 27 of the Indian Arms Act and Section 142 of the Maharashtra Police Act, on furnishing P.R.Bond of Rupees Twenty Five Thousand with one solvent surety in the like amount;

iii) The applicant shall not enter into the territorial jurisdiction of District-Kolhapur, till the conclusion of the trial:

iv) The applicant shall provide his address and name of the nearby police station to the IO, which he shall attend the said Police Station on 1st and 16th day of every month between 10.00 a.m. to 11.00a.m., till the conclusion of the trial except on the date of trial.

v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;

vi) Liberty is granted to the State for cancellation of bail if the applicant commits similar offence;

vii) The applicant shall attend the trial before the Trial Court regularly on every date unless exempted by the trial Court for any reason.

(ANIL S. KILOR, J)