

CORAM : ANIL S. KILOR, J.

DATE : 27TH NOVEMBER, 2024.

PC:

1. Heard.
2. By this application under Section 439 of the Code of Criminal Procedure the applicants are seeking bail in Crime No.26 of 2017, registered with Mahatma Gandhi Chowk Police Station, Sangli for the offences punishable under Sections 302, 307, 143, 147, 149 and 504 of the Indian Penal Code and Section 37(1) (3) and 135 of the Maharashtra Police Act.
3. The applicants are in jail from 2017. Even after more than 7 years the trial is not concluded. Furthermore, it appears that few witnesses have been examined. There are further witnesses to be examined, which would take sometime. Thus, it is unlikely that the trial will be concluded in near future.
4. In the above-referred backdrop, the learned counsel for the applicants are seeking bail on the ground of long period of incarceration. It is pointed out that there are no antecedents against the applicants.
5. Whereas, the learned counsel for the informant states that if the applicants are released on bail they may pressurize the witnesses and there is every possibility that they may file false complaint against the informant or his family members.

6. The Hon'ble Supreme Court of India in the case of '*Sheikh Javed Iqbal @ Ashfaq Ansari @ javed Ansari vs. State of Uttar Pradesh*')¹, 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.

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

¹ (2024) SCC Online SC 1755

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. Najeer (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.”

7. In the present case considering the long period of incarceration of the applicants and the fact that there is unlikelihood that the trial will be concluded in near future, I am of the opinion that

the applicants are entitled for grant of bail.

8. As regards the apprehension expressed by the learned counsel for the informant, the learned counsel for the applicants, upon instructions, submit that the applicants are ready to abide by any condition including not to enter into territorial jurisdiction of Tal-Miraj, District-Sangli, till the conclusion of the trial.

9. In the circumstances, I pass the following order:

ORDER

- i) Criminal applications are allowed;
- ii) It is directed that the applicants be released on bail in connection with Crime No.26 of 2017, registered with Mahatma Gandhi Chowk Police Station, Sangli for the offences punishable under Sections 302, 307, 143, 147, 149 and 504 of the Indian Penal Code and Section 37(1) (3) and 135 of the Maharashtra Police Act, on furnishing PR.Bond of Rupees Twenty-Five Thousand with one solvent surety in the like amount;
- iii) The applicants shall not enter into territorial jurisdiction of Tal-Miraj, District-Sangli, till the conclusion of the trial;
- iv) The applicants shall provide their address and name of the nearby police station to the IO, which they shall attend the said Police Station on 1st day of every month

between 10.00a.m. to 11.00 a.m., till the conclusion of the trial except on the date of trial;

v) The applicants shall attend each and every date of the trial.

vi) The applicants 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;

vii) Liberty is granted to the State to apply for cancellation of bail in case of any breach of condition or if the applicants commit similar offence;

viii) The applicants shall attend the trial before the trial Court regularly on every date unless exemption is granted by the trial Court.

The applications are disposed of.

(ANIL S. KILOR, J)