

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.550 OF 2023

Jayesh Shevantilal Shah

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Ashok Mishra a/w Mr. Jilesh Sanghavi i/b M/s. Solicis lex, for the Applicant.

Mr. Amit Palkar, APP, for the Respondent-State.

Mr. Anilkumar B. Gadivadd, SDPO-Kolhapur, present.

CORAM: MADHAV J. JAMDAR, J.

DATED: 02nd APRIL 2024

P.C.:

1. Heard Mr. Mishra, learned Counsel for the Applicant and Mr. Palkar, learned APP for the Respondent-State.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973* ("CrPC"). The relevant details are as follows:-

1	C. R. No.	136 of 2019
2	Date of registration of F.I.R.	09/04/2019
3	Name of Police Station	Rajarampuri, District-Kolhapur
4	Section/s invoked	143, 147, 149, 395, 307, 353, 332, 155, 109, 324, 323 & 427 of the <i>I.P.C., 1860</i> ; 4 & 5 of the <i>Maharashtra Prevention of Gambling Act, 1887</i> ; 65(e) of the <i>Bombay Prohibition Act, 1949</i> ;

		37 & 135 of the <i>Bombay Police Act, 1951</i> .
5	Date of incident	08/04/2019
6	Date of arrest	14/06/2019
7	Date of filing Charge-sheet	05/10/2019

3. The prosecution case is set out in paragraph No.3 of Order dated 19th January 2024 passed in Criminal Bail Application No.1904 of 2023 of co-Accused, which is reproduced hereunder for reference:-

" 3. The case of the prosecution is that on 8th April, 2019, raid was conducted at Matka Den of accused no.26 Salim Yasim Mulla. While police were recording panchanama, accused no.1 (wife of accused no.26) instigated other accused who attacked the police and attempted to commit murder, prevented the police from performing their duty, and, tried to snatch the cash from the police which was seized from the house of accused Nos.1 and 26. About 29 accused were arrested. Accused no.26 and others were members of organized crime syndicate indulging in continuous unlawful activity. The kingpin of the gang was accused no.26, Salim Yasim Mulla. Various cases were registered against him such as dacoity, extortion, unlawful business of betting, attempt to commit murder etc. During the course of investigation, it was revealed that accused no.26 Salim Yasim Mulla used to sent money received from illegal Matka business and acquired huge property out of the proceeds received from the illegal Matka business. Accused no.30 Rakesh Agarwal, 31 Zakir Abdul Mirajkar, 32 Ankush Maruti Vagre, 33 Sarad Devasrao Korane, 36 Jayesh Shevantilal Shah, 37 Shailesh Gunvantirai Maniyar, 38, Viral Prakash Sawla, 39 Jitendra Kantilal Gosalia, 40 Jayesh Sawla, 41 Rajendra Dave, 42 Manish Kishor Agarwal, 43 Samrat Subhash Korane and 44 Prakash Sawla facilitated the other accused particularly accused no.26 Salim Mulla for committing the organise crime. They were members of organised crime syndicate headed by accused no.26 Salim Mulla. During personal search of the applicant, mobile hand set of the applicant was seized under arrest panchanama. On completing investigation, charge-sheet was filed. "

4. At the outset, Mr. Mishra, learned Counsel for the Applicant submitted that there are a total of 44 Accused persons and 26 out of them have been enlarged on bail. He submitted that the Applicant was arrested on 14th June 2019 and he is incarcerated since almost 4 years and 10 months. He submitted that although the Charges have been framed on 19th October 2022, there is no further progress in the trial and not even a single witness has been examined. He heavily relied on the Order dated 19th January 2024 passed by a learned Single Judge [Prakash D. Naik J.] in Criminal Bail Application No.1904 of 2023. Mr. Mishra, learned Counsel submitted that the Applicant is incarcerated since 4 years and 10 months and that there is no progress in the trial and therefore there is a violation of the Applicant's fundamental right to speedy trial. He, therefore seeks that the Applicant be enlarged on bail.

5. On the other hand, Mr. Palkar, learned APP strongly opposed the Bail Application. He submitted that the Charge-sheet has been filed on 5th October 2019 and the learned Trial Court has issued the process. He submitted that the delay in trial is attributed to the Applicant.

6. The factual position on record shows that Charges were framed on 19th October 2022. Thereafter, the prosecution filed the list of witnesses on 14th August 2023 i.e. after about 10 months. The witness summons were issued on 6th February 2024 and 7th February 2024. Although the witness summons remained un-served, no steps were

taken to ensure the presence of witnesses for more than five hearings. As per the list of witnesses filed by the prosecution on 14th August 2023, there are a total of 140 witnesses proposed to be examined by the prosecution. Accordingly, the trial will take a considerably long time to conclude.

7. Speedy trial is one of the facets of right to life and liberty guaranteed under Article 21 of the Constitution of India. Speedy trial is an essential ingredient of “reasonable, fair and just” procedure guaranteed by Article 21 and it is the constitutional obligation of the State to devise such a procedure as would ensure speedy trial to the Accused.¹ Therefore, the Applicant is entitled for bail.

8. Mr. Mishra, learned Counsel for the Applicant relied on the decision of the Supreme Court of India in ***Rabi Prakash v. State of Odisha***² and more particularly on paragraph Nos.3 and 4 therein. The said paragraph Nos.3 and 4 read as under:-

"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

1 Hussainara Khatoon (IV) v. Home Secy., State of Bihar, (1980) 1 SCC 98

2 2023 SCC OnLine SC 1109

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."

9. Mr. Mishra, learned Counsel has also heavily relied on the said Order dated 19th January 2024 passed by a learned Single Judge [Prakash D. Naik, J.] in the case of the co-Accused *Rajendra @ Raju Dharamsi Dave v. The Deputy Superintendent of Police & Anr.* in Criminal Bail Application No.1904 of 2023. Paragraph No.7 of the said Order reads as under:-

"7. The applicant is in custody for a period of about 4 and half years. Although charge is framed on 19.10.2021, there is no progress in the trial. The prosecution has provided the list of 140 witnesses. Learned A.P.P. submitted that the prosecution may examine about 60 witnesses. This indicates that the trial may not get over immediately. There are no criminal antecedents against the applicant. The applicant was not involved in assault. The co-accused are granted bail by this Court vide order dated 8th February, 2023. The embargo under Section 21(4) of the MCOC Act would not be an impediment to grant bail."

10. Considering the above position, a case for granting of bail is made out.

11. It is an admitted position that investigation has been completed and that Charge-sheet has been filed on 05th October 2019. Although charges have been framed on 19th October 2022 there is no further progress in the trial and not a single witness is examined. As per the list of witnesses, prosecution is proposed to examine about 140 witnesses. The trial is likely to take a considerably long time.

12. The Applicant does not appear to be at risk of flight.
13. Accordingly, the Applicant can be enlarged on bail by imposing conditions.
14. In view thereof, the following order:-

ORDER

- (a) The Applicant-Jayesh Shevantilal Shah be released on bail in connection with C.R. No.136 of 2019 registered with the Rajarampuri Police Station, District-Kolhapur on his furnishing P.R. Bond of Rs.25,000/- with one or two local solvent sureties in the like amount.
- (b) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (c) The Applicant shall report to the Rajarampuri Police Station, District-Kolhapur once in a month i.e. on the first Sunday of every month between 11.00 a.m. and 1.00 p.m. until the conclusion of the trial.
- (d) The Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case, so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.
- (e) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (f) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.

(g) The Applicant shall surrender his passport, if any, to the Investigating Officer.

15. The Bail Application is disposed of accordingly.

[MADHAV J. JAMDAR, J.]