

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1424 OF 2024

S. Thiagarajan ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Mohit Bhardwaj, for the Applicant.
Mr. S.R. Agarkar, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.
DATE : APRIL 18, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. The applicant, who is arraigned in C.R. No.124 of 2021 registered with Turbhe police station for the offences punishable under sections 406 and 420 of Indian Penal Code, 1860 seeks to be enlarged on bail.
3. The instant application is in fact the fourth application for bail before this Court. The first application was rejected by this Court by an order dated 29th September, 2021. Second application was withdrawn on 14th July, 2022. Third came to be dismissed on 7th August, 2023.
4. The applicant had carried the order passed in the first bail application dated 29th September, 2021 before the Supreme Court in Special Leave Petition (Cri) No. 10045 of 2021. The Supreme Court had declined to entertain Special Leave Petition under Article 136

of the Constitution of India and, accordingly, the Petition came to be dismissed.

5. The learned counsel for the applicant submitted that the applicant has been in custody since 12th April, 2021. Charge has yet not been framed. An endeavour was made to urge that an offence under section 420 of the Penal Code cannot be said to have been *prima facie* made out. At best an offence under section 406 can be said to have been made out. The applicant has already undergone the maximum sentence prescribed for the offence punishable under section 406 of the Penal Code. Therefore, the applicant be enlarged on bail.

6. In opposition to this, Mr. Agarkar, learned APP resisted the prayer for bail. It was submitted that there is no change in circumstances. The order of rejection of bail has been affirmed by the Supreme Court and, therefore, there is no propriety in again entertaining the application for bail on merits of the matter.

7. The submission of learned APP that in the absence of any change in circumstances, the prayer for bail can not be considered afresh appears impeccable. However, the Court can not lose sight of the fact that the first application for bail was rejected on 29th September, 2021 immediately after the charge sheet was lodged. The applicant has been in custody since more than three years.

Charge has yet not been framed. Having regard to the pace of the proceedings before the learned Magistrate, it is very unlikely that the trial can be concluded within a reasonable period. Moreover, even in the event the learned Magistrate returns a finding of guilt, the maximum punishment which can be lawfully imposed by the learned Magistrate would be three years, unless the learned Magistrate resorts to the provisions under section 325 of the Code of Criminal Procedure, 1973.

8. At this stage, the Court may not delve into the question as to whether section 420 of the Penal Code is prima facie made out. Even if the Court proceeds on the premise that the offence under section 420 is prima facie made out, yet, the period of incarceration which the applicant has already undergone, is substantial. It is well recognized that long period of incarceration without a real prospect of expeditious conclusion of the trial even melts down the statutory restriction in the matter of grant of bail under the special enactment like UAPA, NDPS and MCOCA. (**Union of India vs. K.A. Najeer**¹).

9. As the maximum punishment which the offence under section 420 of the Code entails is imprisonment for seven years and the applicant has been in custody for more than three years and even

¹ AIR 2021 SUPREME COURT 712.

charge the trial has yet not been framed, in my view, further detention of the applicant would impinge upon the right to life guaranteed under the Constitution of India.

10. I am, therefore, inclined to allow the application. Since the learned APP submitted that the applicant has antecedents, I deem it appropriate to impose stringent conditions.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant S. Thiagarajan be released on bail in C.R. No.124 of 2021 registered with Turbhe police station, on furnishing a P.R. Bond of Rs. 1,00,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at Turbhe police station on the first Monday of every month between 11 am to 1 pm for a period of three years or till conclusion of the trial, whichever is earlier.
- 4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.
- 6] The applicant shall furnish his contact number and

residential address to the investigating officer and shall keep him updated, in case there is any change.

7] The applicant shall regularly attend the proceedings before the jurisdictional Court.

8] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)