



PMB

912.ba.1711-23.doc

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

BAIL APPLICATION NO.1711 OF 2023

MUZAMMIL M. SURVE	..APPLICANT
VS.	
THE STATE OF MAHARASHTRA	..RESPONDENT

**WITH
BAIL APPLICATION NO.2539 OF 2022**

MUZAFFAR SHAUKAT PAWASKAR	..APPLICANT
VS.	
THE STATE OF MAHARASHTRA	..RESPONDENT

Adv. Premlal Krishnan a/w Adv. Preston Dias a/w Adv.
Prashant Bothre a/w Adv. Siddharth Pimpale i/b. PAN India
Legal Services LLP for the applicant in BA/1711/2023.
Adv. Sameer D. Hatle a/w Adv. Prathamesh Fernandes for
the applicant in BA/2539/2022.
Ms. S. D. Shinde, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 8, 2024

P.C. :

1. Heard learned counsel for the applicants and learned APP for the State.
2. The present bail applications are being disposed of by a common order. These are the applications for bail in respect of the offence punishable under Sections 489(A), 489(B), 489(C), 489(D), 120-B and 34 of the Indian Penal

Code (hereafter 'IPC' for short) registered on 18.11.2020 vide C.R. No.923 of 2020 with Mumbra Police Station, Thane.

3. The applicant-Muzammil M. Surve in Bail Application No.1711 of 2023 is the accused No.1. The applicant-Muzaffar Shaukat Pawaskar in Bail Application No.2539 of 2022 is the accused No.2. So far as the applicant-Muzammil M. Surve is concerned, the earlier Bail Application No.1675 of 2022 filed by him was rejected by this Court on 22.11.2022. For ease of reference the order dated 22.11.2022 is reproduced which reads thus :-

"1. This is an application for bail in respect of offence punishable under Sections 489(A), 489(B), 489(C), 489(D), 120-B and 34 of the Indian Penal Code, 1860 registered with Mumbra Police Station, vide C.R. No. 923 of 2020. The First Information Report (hereafter "FIR", for short) was lodged at the instance of complainant - Mr. Sanjay Nandkumar Bhiwankar, the Deputy Sub-Inspector of Police, Anti Extortion Bureau, Crime Branch, Thane, on information received at 23:42 Hours of 17/11/2020.

2. The applicant was arrested on 18/11/2020. The charge-sheet has been filed on 14/01/2021 and the applicant has been arraigned as Accused no.1. The other applicants are Mr. Mujjafar Pawaskar as Accused no.2, Mr. Pravin Parmar as Accused no.3 and Nasreen Kazi as Accused no. 4. Learned counsel for applicant submitted that the applicant was first arrested and thereafter the FIR was registered against him which is a procedure contrary to law. It is further submitted that it is Accused no.3 from whose house the printer and scanner was recovered and that applicant

has no connection with the Accused no.3. Learned Counsel submitted that the earlier Bail Application bearing No.2413 of 2021 post chargesheet filed before this Court, was withdrawn by the applicant seeking liberty to approach the Trial Court due to change in circumstances. Learned Counsel submitted that the investigating agency failed to preserve and produce CCTV footage of the police station as well as CDR records. He submits that the police have taken a bold stand that no CCTV records were preserved, even though not even a year has passed for the alleged incident, which is contrary to the law laid down. Learned Counsel submitted that assuming without admitting there is some material against the applicant, the same pertains only to the possession of counterfeit currency. According to him, the manner in which the arrest has been made and failure to preserve the CCTV footage goes to show that the investigating agency has levelled false charges against the applicant. The Learned Counsel relied upon the decisions of this Court in the cases of Amit Krupaldas Walwani Vs. The State of Maharashtra, Javed Shaikh Khalil Shaikh Vs. The State of Maharashtra and Alka Rohidas Kshirsagar Vs. State of Maharashtra in support of his submission that mere allegations of possession of counterfeit currency is a good ground for release on bail. It is further submitted that not even the charge has been framed by the Trial Court and the Trial will take a long time to commence. Learned Counsel relied upon the decision of the Supreme Court in the case of Ashim Vs. National Investigation Agency to submit that deprivation of personal liberty without ensuring speedy trial is not consistent with the Article 21 of the Constitution of India.

3. Learned APP, on the other hand submitted that counterfeit currency of different denominations amounting to Rs. 4,52,000/- were found on the person of the applicant. The printer on which counterfeit notes are allegedly printed along with other materials was recovered from the Accused no. 3. Learned APP relied upon the statement of Ms. Sabah Mujjafar Pawaskar the wife of Mr. Mujjafar Pawaskar - Accused no. 2 to demonstrate that the allegations against the applicant are serious and to show the complicity of the applicant alongwith Accused No.3 in printing the counterfeit currency.

4. The counterfeit currency of substantial value is seized

from the applicant. There are specific allegations against the applicant and accused as regards conspiracy of false and fabricated currency notes. The application for bail bearing No.2413 of 2021 dated 27/07/2021 filed by the applicant pursuant to the filing of the charge sheet was allowed to be withdrawn by this Court with liberty to approach the Sessions Court, as according to the applicant there was change in circumstances. The Sessions Court rejected the application for bail.

5. The alleged act is serious in nature as it impacts the economy. Having regard to the materials on record and the nature of the allegations, I do not find this is to be a fit case to release the applicant on bail at this juncture. Liberty to file fresh application, in case there is no progress of the trial in the next six months.

6. Bail Application is rejected.”

4. The applicant- Muzammil M. Surve had challenged the aforesaid order in the Supreme Court. By the order dated 22.03.2023 the Supreme Court dismissed the appeal. The order dated 22.03.2023 reads thus :-

“Heard the learned counsel for the petitioner as also the learned counsel for the respondent-State of Maharashtra and perused the petition papers.

The learned counsel for the petitioner, in order to contend that the petitioner is not involved in the nature of the offence alleged against him, has taken us through the F.I.R. and also through the contents of the charge-sheet to point out that according to the learned counsel for the petitioner, the petitioner is not involved and even if, ultimately a case is to be made out against the petitioner, at best, it can only be about the petitioner being involved in possession of fake currency notes and not for anything else and as such there is no *mens rea*.

Be that as it may, when in a matter of the present nature where this Court is concerned with regard to the

grant of bail or otherwise to the petitioner and the Court is examining the correctness or otherwise of the Order passed by the High Court, from the allegations as seen from the F.I.R., it is noted that allegations against four accused has been made and the petitioner has been arraigned as accused no.1. The High Court, in that regard, while taking note of a similar contention that was put forth before it, has referred to the statement made by Ms. Sabah Mujjafar Pawaskar who is the wife of Mr. Mujjawar Pawaskar-Accused no.2 which demonstrates that certain allegations are made against the petitioner herein, which are serious.

Therefore, in a matter of the present nature, we see no reason to interfere with the order passed by the High Court.

The petition is accordingly, dismissed.

Pending application(s), if any, shall stand disposed of."

5. The present application is filed for bail on the ground of long incarceration. The accusations against the applicant are no doubt serious and therefore there is no question now of considering the application for bail on merits, as even the Supreme Court has held against the applicant.

6. Learned counsel for the applicant submitted that the applicant was arrested on 18.11.2020. The applicant is in custody now for almost three years and three months. In the order dated 22.11.2022 it was recorded that the charge was yet to be framed by the trial Court. Even after a year and three months of the rejection of the earlier bail

application, the position remains the same and I am informed that the charge is not yet framed. This is confirmed by learned APP.

7. Learned APP however opposed the application contending that having regard to the seriousness of the accusations and more so when the earlier bail application filed was dismissed which order was confirmed by the Supreme Court, the present application should not be entertained and at the most the trial Court be directed to expedite the trial.

8. I am not inclined to direct the trial Court to expedite the trial considering the burden on the trial Courts. The prosecution proposes to examine 34 witnesses. Though all the witnesses may not be examined as per the submission of learned APP, still then the trial is not likely to conclude any time soon. The applicant is already in pre-trial custody for almost three years and three months. Any further custody will amount to a pre-trial punishment. There are no criminal antecedents reported against the applicant.

9. Learned counsel for the applicant on instructions

submitted that the applicant is willing to stay out of the jurisdiction of Thane district as an apprehension was expressed by the learned APP that the applicant may resort to similar activities with his acquaintances if he allowed to stay in the area which is his comfort zone. The statement is accepted.

10. In this view of the matter, I am inclined to enlarge the applicant on bail considering that the trial is not likely to conclude any time soon and on the ground of long incarceration by imposing stringent conditions. The applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

- (a) The Bail Application No.1711 of 2023 is allowed.
- (b) The applicant- Muzammil M. Surve in connection with C.R. No.923 of 2020 registered with Mumbra Police Station, Thane shall be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or more local sureties in the like amount.
- (c) The applicant shall attend the office of Anti Extortion Cell, Court Naka, Thane once in a week every

Monday of the month between 11.00 a.m. and 1.00 p.m.

(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 him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the trial Court as well as the Investigating Officer and shall keep them updated, in case there is any change while residing outside Thane district.

(f) Except for attending the trial and for the purpose of reporting to the office of Anti Extortion Cell, Court Naka, Thane, the applicant shall not enter Thane District after being released on bail, till the trial concludes.

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

11. The Bail Application No.1711 of 2023 is disposed of.

BAIL APPLICATION NO.2539 OF 2022 :-

12. So far as the applicant-Muzaffar Shaukat Pawaskar in Bail Application No.2539 of 2022 is concerned, his role is similar to that of the applicant-Muzammil M. Surve. For the reasons enlarging the co-accused - Muzammil M. Surve on bail, even the applicant- Muzaffar Shaukat Pawaskar is enlarged on bail on the same terms and conditions as the co-accused - Muzammil M. Surve. Hence, the following order :-

ORDER

- (a) The Bail Application No.2539 of 2022 is allowed.
- (b) The applicant-Muzaffar Shaukat Pawaskar in connection with C.R. No.923 of 2020 registered with Mumbra Police Station, Thane shall be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or more local sureties in the like amount.
- (c) The applicant shall attend the office of Anti Extortion Cell, Court Naka, Thane once in a week every Monday of the month between 11.00 a.m. and 1.00 p.m.

(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 him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the trial Court as well as the Investigating Officer and shall keep them updated, in case there is any change while residing outside Thane district.

(f) Except for attending the trial and for the purpose of reporting to the office of Anti Extortion Cell, Court Naka, Thane, the applicant shall not enter Thane District after being released on bail, till the trial concludes.

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

13. The Bail Application No.2539 of 2022 is disposed of.

(M. S. KARNIK, J.)