



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3676 OF 2023**

Girishkumar Swaminath Verma	...	Applicant
versus		
State of Maharashtra	...	Respondent

Mr. Anil G. Lalla with Mr. Aryan K. Kotwal i/by Lalla and Co., for Applicant.
Mr. S.R.Aagarkar, APP for State.
Mr. Ravindra Pawar, HC, Khar Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 18 JANUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application for bail in NDPS Special Case No.195 of 2019 arising out of C.R.No.98 of 2019 registered with Khar Police Station for the offences punishable under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
3. The indictment against the applicant is that the applicant was found in possession of 2.516 kg and co-accused Sudha Tiwari was found in possession of 2.518 kg Charas. Learned Counsel for the applicant submitted that the applicant has preferred this application primarily on the ground of long incarceration as an under-trial prisoner. In fact, by an order dated 30 November 2022 in BA No.3108 of 2022 preferred by co-accused Sudha A. Tiwari, this Court had directed that the trial be

concluded expeditiously and preferably within a period of three months thereof, as the Court was informed that the trial has commenced and only 5-6 witnesses were to be examined. However, the trial could not be concluded as directed. Hence, the said co-accused Sudha Tiwari preferred an application for bail and by an order dated 18 October 2023 in BA No.1413 of 2023 this Court granted bail to the co-accused Sudha Tiwari taking into account the long period of incarceration.

4. By an order dated 30 November 2022 in BA No.3108 of 2022, while expediting the trial, this Court observed, *inter alia*, as under :

“4. My attention was invited to page 90 of the paper book where it is reflected that the applicant was asked whether she would like to be searched before the Gazetted Officer or the Magistrate. There is an endorsement on such a report by the applicant that she has no objection to be searched by the officers. Learned Counsel for the applicant submits that she may not have understood the contents in the said report. It is not possible for me to consider the submissions at this stage as there is a report on record indicating that she was informed of her right to be searched before the Gazetted Officer or the Magistrate. However, considering that the trial has commenced and the witnesses have been examined, further that only 5 to 6 witnesses are being examined, this is a fit case where the trial Court can be requested to expedite the trial. The trial Court is requested to expedite the trial and conclude the same as far as possible within a period of three months from today.”

5. In the order dated 18 October 2023 in BA No.1413 of 2023, noting the aforesaid order, this Court released the co-accused Sudha Tiwari on bail observing,

inter alia, as under :

“5. Paragraph 3 of the order dated 30/11/2022 reveals that not much progress is made in the trial since the passing of the order on 30/11/2022. The trial Court was requested to expedite the trial and conclude the same as far as possible within 3 months from 30/11/2022. Undoubtedly, there is heavy workload which the trial Court has to deal with. The applicant is now incarcerated as an undertrial for almost more than 4 years and 5 months. The trial is still likely to take some more time to conclude. Further, the applicant, a woman has a child along with her in custody. I am inclined to enlarge the applicant on bail. No criminal antecedents are reported against the applicant. There is nothing on record to indicate that the trial is protracted at the instance of the present applicant. Learned APP submits that the applicant is from Uttar Pradesh and therefore there is likelihood of the applicant evading trial. In my opinion, the applicant can be enlarged on bail by imposing conditions.”

6. The applicant has been in custody since 22 May 2019. Evidently, the applicant is in custody since more than four years and 8 months. Undoubtedly, the applicant is found in possession of the commercial quantity of the contraband articles. The interdict contained in Section 37 of the Act comes into play. However, it has consistently been held that rigours of the restrictions on the grant of bail prescribed by the special enactments melt down where the accused has been incarcerated for a long period, thereby depriving the accused the right to life guaranteed under Article 21 of the Constitution of India.

7. In the case of **Shaheen Welfare Association V/s. Union of India and**

Ors.¹ the Supreme Court enunciated that the stringent provisions can be justified on the presumption that the trial of the accused will take place without undue delay. The observations in paragraph No.10 read as under :

“10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh case², on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21.”

8. In **Union of India V/s. K.A.Najeeb (supra)**, where the accused was facing trial for the offences punishable under the Unlawful Activities Prevention Act and the rigours of Section 43-D(5) of the said Act, were attracted, observed as under :

“12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“NDPS”) which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi)³, Babba v/s. State of Maharashtra⁴ and Umarmia v/s. State of Gujarat⁵ enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure

1 (1996) 2 SCC 616

2 (1994) 3 SCC 569

3 (1999) 9 SCC 252

4 (2005) 11 SCC 569

5 (2017) 2 SCC 731

the protection of innocent civilians.

15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v/s. Union of India*⁶, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.

17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of UAPA per-se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statute as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

9. In a recent pronouncement in the case of **Mohd. Muslim @ Hussain**

6 (1994) 6 SCC 731

V/s. State (NCT of Delhi)⁷ the Supreme Court again reiterated the importance of the expeditious completion of the trial where there are restrictions on the grant of bail, as under :

“13. When provisions of law curtail the right of an accused to secure bail, and correspondingly fetter judicial discretion (like Section 37 of the NDPS Act, in the present case), this court has upheld them for conflating two competing values, i.e., the right of the accused to enjoy freedom, based on the presumption of innocence, and societal interest – as observed in Vaman Narain Ghiya V. State of Rajasthan⁸ (“the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal....”). They are, at the same time, upheld on the condition that the trial is concluded expeditiously. The Constitution Bench in Kartar Singh V/s. State of Punjab⁹ made observations to this effect. In Shaheen Welfare Association (supra), again, this court expressed the same sentiment, namely that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be concluded swiftly.

.....

15. Even in the judgment reported as Vijay Madanlal Chaudhary V/s. Union of India¹⁰, this court while considering bail conditions under the Prevention of Money Laundering Act, 2002, held that:

“If the Parliament/Legislature provides for stringent provision of no bail, unless the stringent conditions are fulfilled, it is the bounden duty of the State to ensure that such trials get precedence and are concluded within a reasonable time, at least before the accused undergoes detention for a period extending up to one-half of the maximum period of imprisonment specified for the concerned offence by law.”

7 2023 SCC online SC 352

8 (2009) 2 SCC 281

9 (1994) 3 SCC 569

10 2022 SCC Online SC 929

16. In the most recent decision, Satender Kumar Antil V/s. Central Bureau of Investigation¹¹ prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A17 (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply :

“We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code.”

10. In another recent pronouncement, in the case of Rabi Prakash V/s. State of Odisha¹² the Supreme Court observed as under :

“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

11 (2022) 10 SCC 51

12 2023 SCC Online SC 1109

the most precious fundamental right 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.”

11. Learned APP submitted that what weighed with the Court in releasing the co-accused Sudha Tiwari on bail was the fact that the said co-accused was a woman, with five years child to take care of.

12. Indeed that factor was considered by this Court. However, the primary fact which weighed with the Court was the long period of incarceration. It is imperative to note that despite direction to expedite the trial, the trial could not be completed. This is not to reflect upon the Special Court. The large pendency of the cases before the Special Court makes it realistically impossible to accede to the submission of the learned APP to again direct the Special Court to expeditiously conclude the trial.

13. In the circumstances of the case, I do not find any qualitative difference in the claim of the applicant for release on bail on the ground of prolonged incarceration from that of the co-accused, who has been released on bail on that ground. I am, therefore, impelled to exercise the discretion in favour of the applicant and release him on bail.

14. Hence, the following order :

ORDER

- (i) The Application stands allowed.
- (ii) The Applicant – Girishkumar Swaminath Verma be released on bail in C.R.No.98 of 2019 registered with Khar Police Station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the Special Court.
- (iii) The applicant shall mark his presence before Khar Police Station on first Monday of every month in between 11 am to 1 pm for a period of three years or till the conclusion of the trial.
- (iv) The applicant shall not tamper with the prosecution evidence. 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.
- (v) On being released on bail, 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.
- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) 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.)