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

BAIL APPLICATION NO.4205 OF 2023

YAKUB SHAIKH KADAR

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. M. M. Chaudhari for the applicant.

Mr. S. A. Karmakar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : APRIL 18, 2024.

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.

2. This is an application for bail in respect of the offence punishable under Sections 302, 120-B, 143, 147, 148, 149 of the Indian Penal Code (hereafter 'IPC' for short) registered on 27.06.2018 vide FIR bearing C.R. No.114 of 2018 with Nandgaon Police Station, Nashik Rural.

3. The applicant is the accused No.3. The applicant was arrested on 27.06.2018.

4. Learned APP opposed the application for bail. It is submitted that the trial is on the verge of completion. It is

further submitted that the matter is listed before the trial Court tomorrow for further cross-examination of PW-12.

5. Learned counsel for the applicant relied upon the order dated 10.04.2024 in respect of co-accused - Parvez Sayyad Rafique in Bail Application No.3478 of 2023. The order reads thus :-

"4. The offence alleged against the applicant is under Sections 302, 120-B, 143, 147, 149 of the Indian Penal Code (hereafter 'IPC' for short) registered on 27/6/2018 vide C.R. No.114/2018 with Nandgaon Police Station, Nashik Rural. The eye witness accounts for the role of the applicant. There are in all six accused. A chopper is recovered from the applicant.

5. According to learned APP, the trial is protracted at the instance of the accused. A pursis dated 20/3/2024 is produced on record where an application was made on behalf of the advocate of the applicant for an adjournment as was not keeping well. The adjournment was granted subject to witness cost of Rs.100.

6. As the trial is progressing and considering the stage at which the trial is, in normal course learned APP would be justified in contending that long incarceration by itself should not be a ground to enlarge the applicant on bail. It is submitted by learned APP that PW-12 is in box. His examination-in-chief is over. After PW-12 only investigating officer remains to be examined. In ordinary course, there was no difficulty in accepting the request made by learned APP to expedite the trial considering the advanced stage at which the trial is.

7. However, it needs to be noticed that the previous Bail Application No.909/2023 was disposed of on 30/8/2023 by passing the following order.

"1. I am informed that the six witnesses remain to be examined and the trial is progressing.

2. Learned counsel for the applicant, on instructions, seeks leave to withdraw the present application with liberty to apply after two months, if the trial does not proceed substantially.

3. Leave granted. The application is allowed to be

withdrawn with liberty as prayed for and disposed of accordingly.”

8. The applicant then filed this application sometime in October 2023. On 24/1/2024, this Court passed the following order.

“1. Learned APP to take instructions as the learned counsel seriously disputes the exact number of witnesses that remain to be examined. According to learned counsel for the applicant on the earlier occasion when the application for bail was withdrawn, the same was on the basis of incorrect information provided by learned APP that only 6 witnesses are remained to be examined when in fact, there are several witnesses remaining to be examined.

2. Learned APP to take instructions and inform this Court as to the correct status about the number of witnesses that the prosecution proposes to examine hereafter.

3. Stand over to 29/1/2024.”

9. Thereafter, on 30/1/2024, following order is passed:-

“1. Learned APP submits that only four witnesses remain to be examined. The next date fixed for examination of the witnesses is 2/2/2024.

2. The trial Court is requested to expedite the trial and if possible on day-to-day basis considering that the applicant is in custody for more than five years and eight months.

3. Stand over to 14/2/2024.”

10. I am informed that the trial Court proceeded on a day-to-day basis for a week but now the trial is not proceeding on a day-to-day basis. Undoubtedly the trial Court is overburdened and I do not propose to fix a time line at this stage. Then on 13/3/2024, this Court passed the following order:-

“1. I am informed that 12 witnesses have already been examined. On the next date, learned APP to take instructions as to how many more witnesses the prosecution intends to examine.

2. Learned counsel for the applicant submits that the applicant is co-operating with the trial Court and will not seek any adjournments.

3. Stand over to 21/3/2024.”

11. There are in all six accused. PW-12 is in box. Learned counsel for the applicant submits that the applicant will co-operate with the trial Court and will not ask for unnecessary adjournments. Learned counsel for the applicant is instructed to make such a statement on behalf of the other accused as well

that they will co-operate with the trial Court and will not ask for unnecessary adjournments. Statement is accepted.

12. Till the cross-examination of PW-12 is over, PW-12 can be granted police protection if considered necessary. Most of the material witnesses have been examined. There is hardly any possibility of tampering. I propose to enlarge the applicant on bail considering that the applicant is in pre-trial custody for more than five years and ten months with the trial likely to take some more time to conclude. The investigation is complete. The charge-sheet has been filed. There are no criminal antecedents reported against the applicant. The applicant does not appear to be a flight risk."

6. The role of the applicant is similar and in any case not more than the co-accused - Parvez Sayyad Rafique who is enlarged on bail. There are no criminal antecedents reported against the applicant. Learned counsel for the applicant assured that the applicant will co-operate with the trial Court and will not seek any unnecessary adjournments. The applicant will remain present on every date of the trial and will be represented by his advocate. The applicant was arrested on 27.06.2018 and is now in custody for more than five years and nine months. In the facts and circumstances of the present case I am inclined to enlarge the applicant on bail. Hence, the following order :-

ORDER

(a) The bail application is allowed;

(b) The applicant-Yakub Shaikh Kadar in connection with C.R. No.114 of 2018 registered with Nandgaon Police Station, Nashik Rural, shall be released on bail on his furnishing P.R. Bond of Rs.50,000/- with one or more local sureties in the like amount;

(c) Except for attending the trial, the applicant shall not enter the jurisdiction of Nashik District till the trial concludes;

(d) The applicant shall furnish details of his contact number and residential address to the trial Court as well as the concerned police station and shall report to the nearest police station at the place of his residence, outside Nashik District once in a week i.e. on every Sunday between 11:00 a.m. to 1:00 p.m. till the trial concludes;

(e) 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;

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

(g) The applicant shall surrender his passport to the investigating officer.

7. The bail application is disposed of.

8. Needless to mention that in the facts and circumstances of the present case I have enlarged the applicant on bail. The trial Court shall not be influenced by any of the observations made in this order. The trial shall proceed on its own merits and in accordance with law.

(M. S. KARNIK, J.)