

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 749 OF 2024

Faizal Hasamali Mirza @ Kasib .. Appellant
Versus
The State of Maharashtra & Anr .. Respondents

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Mr.Mateen Shaikh, with Mr.Sharif Shaikh, Shrinivas Kshirsagar, Muskan Shaikh, S. Ansari, Ansar Tamboli, Jumma Shaikh, Afrin Khan, Nadeep Shaikh, Arshad Shaikh, Ejaz Shaikh, and Muzamji Shaikh for the appellant.

Mr. Sandesh Patil with Mr.Chintan Shah for respondent NIA.

Mr.Vinod Kadam, DSP, NIA present.

Mr.S.V. Gavand, APP for the State.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE,JJ.
DATED : 27th AUGUST, 2024

PC:-

1 Recently, the Apex Court in case of *Manish Sisodia Vs. Enforcement Directorate*¹, has re-iterated the well accepted principle “bail is the rule and jail is an exception”.

The specific observation in the said judgment reads thus :-

“52 The Court also reproduced the observations made in *Gudikanti Narasimhulu (supra)*, which read thus:

1 2021(3) SCC 713

"10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in Gudikanti Narasimhulu v. Public Prosecutor, High Court reported in (1978) 1 SCC 240. We quote:

"What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox]:

"I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial."

"53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception".

2 On 20/8/2024, Mr.Patil representing NIA informed us that 25 witnesses have been examined and he was directed to take instructions about the further course of action in the trial.

 On the instructions received, Mr.Patil make a statement that NIA intend to examine 48 more witnesses.

3 Considering the long incarceration of the appellant for more than six years as on date, he being arrested on 11/5/2018 by ATS, Kala Chowky police station, in C.R.No. 13/2014, which case was subsequently transferred to NIA in the year 2018 and the FIR being registered vide No.RC-

02/018/NIA/MUM on 2/8/2018, and since considerable length of time is likely to be consumed in examining 48 witnesses and specifically it is also informed to us that the Court, which is in seisin of the trial, is already entrusted with 12 time-bound trials, we do not intend to direct the learned Judge to perform an impossible task of expeditiously concluding the trial. It is a well known principle in law, that justice hurried is justice burried, and in no way, we want the Judge to hurry up the trial under our orders.

Since the right to speedy trial is a well recognised right of an accused, being covered under Article 21 of the Constitution of India, we deem it appropriate to pass the following order:-

O R D E R

- (a) Appeal is allowed.
- (b) Appellant Faizal Hasamali Mirza @ Kasib is directed to be enlarged on bail in FIR No.RC-02/2018/NIA/Mum, Mumbai, on furnishing P.R. Bond to the extent of Rs.50,000/- with one or more sureties in the like amount.
- (c) The appellant shall mark his attendance on first Monday of every month between 05:00 p.m to 06:00 p.m. to NIA, Mumbai and make himself available as and when required by the Investigating Officer.
- (d) The appellant shall provide his current address, telephone number, place of residence and intimate about the change if any, to the concerned Investigating Officer.

(e) The appellant 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 appellant shall not tamper with evidence.

(f) The appellant shall not travel outside the jurisdiction of the Trial Judge without its prior permission.

(MANJUSHA DESHPANDE,J)

(BHARATI DANGRE, J.)