

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 351 OF 2024

Anees Iklakh Sheikh

.. Appellant

Versus

1. State of Maharashtra

2. National Investigation Agency,
Mumbai (NIA)

.. Respondents

...

Mr. Ravi Diwedi, for the Appellant.

Mr. J. P. Yagnik, A.P.P. for the State/Respondent.

Mr. Sandesh Patil, Special P.P. a/w Mr. Chintan Shah, for the
Respondent No.2-NIA.

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CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 25th JUNE, 2024

P.C:-

1. This is an Appeal filed under Section 21(5) of the National Investigation Agency Act.

2. The present Appellant is the original accused No.3 in the First Information Report ("FIR") bearing No. 357 of 2018, dated 11.10.2018, registered by the Police Constable at Bhiwandi Taluka Police Station, for the offences punishable under Sections 120B, 489(B) and 489(C) of the Indian Penal Code ("IPC"). After registration of the FIR, further investigation of the crime was handed over to the National Investigation Agency ("NIA"), and the case was re-registered

as NIA Case No. RC/03/2018/NIA/MUM, under Sections 489(B) and 489(C) read with Section 120-B of the IPC. After completion of investigation, charge-sheet is filed against the present Appellant and other co-accused.

3. It is the case of the prosecution that, the complainant while on duty received a confirmed news through their secret informer that, some unknown persons were likely to arrive at Vadpe, near Sai Dhaba wala area and they are likely to cheat the shopkeeper by using fake currency notes instead of original currency notes. After getting the required orders from the Senior Officer, a trap was arranged. The informant with other police authorities proceeded and reached the said place i.e. near Sai Dhaba area, where the transaction was likely to take place. Around 13.15, one dark grey coloured Maruti Wagonr Car bearing No. MH.02-EH.5195, arrived at the said place. Two unknown persons got down from the car, and went near the pan stall. They bought something from the said pan stall in exchange of the fake currency notes. Doubting the said currency notes, the informant and the other officer caught hold of two persons and two other officers went near the car where three unknown persons sitting in the car, were apprehended. All the five persons were taken into custody. The present Appellant being one of them. On an inquiry, the accused persons gave details about their names and addresses. The present Appellant is accused No.3. When search of the present Appellant was taken, 31 fake counterfeit notes of Rs.2,000/- each were found in the pocket of his pants.

4. After detailed investigation, the prosecution has filed charge-sheet on 05.01.2019. The said case was

transferred to the NIA, therefore it was assigned to the Special Court and the charge-sheet bearing No. NIA/Special Case No. 1 of 2019, has been filed on 05.01.2019. The charges came to be framed in the year 2021.

5. It is the contention of the Appellant that, after filing of charge-sheet, the Appellant has filed Bail Application before the Special Judge of City Civil and Sessions Court, Gr. Bombay, however it has been rejected vide order dated 27.12.2023. The Appellant is challenging the said order of rejection of his Bail Application in the present Appeal. According to the Appellant, apart from the 31 counterfeit notes, which were seized from his pocket on the spot and 36 currency notes recovered at his instance *vide* Memorandum Panchanama dated 12.10.2018, there is no other evidence against the present Appellant. He has no criminal antecedents apart from the present FIR. He has already undergone imprisonment for more than five years and there is no progress in the trial. The said trial is likely to be prolonged as the prosecution has given list of 57 witnesses. Though the charges have been framed in the year 2021, there are only two witnesses examined by the prosecution till date. Last of such witness was examined on 06.02.2024. After 06.02.2024, there is no progress in the matter.

It is the contention of the Appellant that, the offence for which he has been kept behind the bars, provides for punishment for a term of ten years under Section 489(B) and seven years under Section 489(C) of the IPC. Therefore, considering the sentence for which he is likely to be punished, even assuming that there is a conviction, he has already

undergone more than half of the punishment without being tried and there is no any progress in the trial. Therefore, considering that he has no criminal antecedents and the trial is likely to be prolonged, he deserves to be released on bail. According to the Appellant, the learned Judge has mechanically passed the order rejecting his Application for Bail. The only grounds mentioned by the learned Judge are that; the offence is of serious nature; and no new ground is made out by the Appellant, on these grounds his bail application has been rejected.

6. Learned counsel for the Appellant has placed reliance on the Judgment of the Hon'ble Apex Court in the case of *Union of India V/s. K. A. Najeed, passed in Criminal Case No. 98 of 2021, arising out of Special Leave Petition (Cri.) No. 11616 of 2019, decided on 01.02.2021.*

7. The learned Special P.P. appearing for the prosecution on behalf of the NIA, has strongly opposed the present Appeal. It is the contention of the Special P.P. that, the offence for which the Appellant has been charged is of serious nature; counterfeit notes of the value of Rs.4,78,000/- have been seized from Appellant, during the trap itself and there is likelihood of a larger conspiracy. The Special Court has already rejected the Bail Application of the Appellant. It is further submitted that during the pendency of the matter, charges were framed against the accused Nos.1, 2, 5 and 8. Since they pleaded guilty, they are sentenced to undergo imprisonment for seven years. It is further submitted that, there is sufficient oral, documentary, material and electronic evidence available against the present Appellant, indicating his direct

involvement in the conspiracy in the present crime, therefore he is not entitled for Bail. The Appellant being one of the main conspirator, his Appeal deserves to be dismissed and the order passed by the Special Judge is required to be maintained.

It is the contention of the learned Special P.P. that Sections 489(B) and 489(C) are serious offences and it is equivalent to an act of waging war against the state.

The learned Special P.P. has relied on the reported Judgment of the Hon'ble Supreme Court in the case of *Gurwinder Singh V/s. State of Punjab And Anr., reported in (2024) 5 SCC 403.*

8. We have considered the arguments of the Appellant as well as learned Special P.P. and we have gone through the documents placed on record. The undisputed position which emerges from the arguments as well as documents on record, which is also recorded by the learned Judge of the Special Court, is that the present Appellant is arrested in the present crime on 11.08.2018. He is facing the trial and has been undergoing imprisonment since then. In spite of incarceration for more than five and half years, there is no progress in the trial. Amongst the list of 57 witnesses submitted by the prosecution alongwith charge-sheet, only two witnesses have been examined till date.

We have inquired with the learned Special P.P. as to how many witnesses they propose to examine from the list given in the charge-sheet. The learned Special P.P. has informed that they will examine few witnesses and they are

not likely to examine all the witnesses. Be that as it may, considering the speed at which the trial is proceeding, in our opinion it is not likely to complete in near future. Considering the snails pace at which the trial is proceeding, it is not appropriate to keep the present Appellant behind bars, since the investigation is already complete and there is no need of custody of the present Appellant. So also considering that the present Appellant has no criminal antecedents and the offence registered against him is yet to be proved, the Appeal of the Appellant needs to be considered.

9. We have considered the order passed by the learned Judge of the Special Court, the only reasons assigned is that, the offence is of serious nature and the Appellant has a major role to play in the commission of the said crime. Therefore, the learned Judge has refused to exercise his discretion and release the present Appellant on Bail. While passing the said order, the Leaned Judge has also recorded that the prosecution is proceeding with the trial of the case therefore, the Appellant is not entitled for grant of bail. We do not agree with the said observations by the learned Special Judge for the reasons recorded herein above. It is evident that since framing of charges in the year 2021, there is no progress in the trial. In such circumstances it would be apposite to refer to the reported Judgment of the Hon'ble Apex Court in the case of **Union of India V/s. K. A. Najeed** (*supra*), wherein while dealing with a similar situation, the Hon'ble Apex Court has observed that :

“16. 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. Union of India 12, 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.”

In the absence of possibility of timely trial the period of custody undergone by the accused, who has suffered incarceration for a significant period, the Courts would ordinarily be obligated to enlarge the accused on bail regardless of statutory restrictions imposed on the right of bail by the provisions like Section 43 D (5) of UAPA. While considering the case under the UAPA, inspite of there being a statutory restrictions, the Hon’ble Apex Court has observed that, such restrictions cannot be sole metric for denial of bail, if 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 prescribed sentence. It would amount to wholesale breach of Constitutional Right of speedy trial of the accused. Therefore, considering the delay in trial and long incarceration of the

accused, the Hon'ble Apex Court has refused to interfere with the order of the High Court granting bail to the accused in that case.

10. In the present matter, the charge-sheet is already filed and the trial has already commenced, however due to its slow progress, the Appellant seeks his release, pending the trial.

Considering that the charge-sheet is filed on completion of investigation and the trial has already commenced, nothing remains to be solicited from the present Appellant.

The Appellant has roots in the society, as his family is also settled in Mumbai and as such he poses no risk of flight. So far as the apprehension of tampering with the evidence is concerned, the investigation is already complete, hence the apprehension is completely unfounded.

The Appellant can be bound by obtaining his undertaking that, he shall not tamper with the evidence and he will co-operate, during the trial. The Appellant in his Appeal has shown his willingness to furnish cash security and personal surety, if released on bail and also abide by the terms and conditions that would be imposed on him.

11. In our opinion, the Appellant is entitled for his release, on account of his long incarceration and since at this stage, he cannot be kept confined further, he deserve to be released on bail. Hence the the following order :

ORDER

- (a) The Appellant Anees Iklakh Sheikh shall be released on bail in NIA/Special Case No. 1 of 2019, on furnishing P.R. Bond to the extent of Rs. 50,000/- with one or two sureties in the like amount.
- (c) The Appellant shall mark his attendance to the office of National Investigation Agency, Mumbai, on the first Monday of every month between 2.00 p.m to 4.00 p.m. and make himself available as and when required by the Investigating Officer, till the conclusion of the trial.
- (d) The Appellant shall co-operate in conduct of the trial and if there are two consecutive defaults in appearing before the trial Court, the prosecution would be at liberty to file an application seeking cancellation of bail.
- (e) The Appellant shall keep the Investigating Officer informed of current address and mobile contact number and/or change of his residence or mobile details, if any, from time to time.
- (f) The Appellant shall not tamper with the evidence and/or influence the prosecution witnesses.

12. The Criminal Appeal is allowed in the aforesaid terms and is accordingly disposed off.

(MANJUSHA DESHPANDE,J.)

(BHARATI DANGRE, J.)