

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

CRIMINAL BAIL APPLICATION NO. 87 OF 2024

Dipali Dilip Pawar

...Applicant

Vs.

The State of Maharashtra

...Respondent

Mr. Nitin H. Sejpal with Mrs. Pooja N. Sejpal and Ms. A. Desai,
Advocate for Applicant.

Mr. P. H. Gaikwad, APP for State-Respondent.

Mr. Amol B. Jagtap, for Intervener.

Ms. Pooja Ramdas Chavan, PSI, Present.

CORAM:- ANIL S. KILOR, J.

DATED:- 6th AUGUST, 2024

PC:-

1) Heard.

2) By this application under Section 439 of the Code of Criminal Procedure, the applicant is seeking bail in Crime No. 52 of 2018 registered with Khopoli Police Station, for the offences punishable under Sections 302 and 120-B read with Section 34 of the Indian Penal Code, 1860.

3) In the present matter, the applicant was arrested on 17th April, 2018 and, thereafter, on humanitarian ground, she was released on bail by the trial Court on 22nd October, 2019, initially for six months and it

was extended time to time. Lastly on a request of the prosecution, the applicant surrendered on 10th January, 2024.

4) It is submitted that there are about 50 witnesses and until now two witnesses have been examined. It is argued that there is no end of the trial in sight to conclude in the near future. It is pointed out that already a period of more than six years has lapsed after the alleged date of incidence. It is therefore argued that considering the fact that the applicant was on temporary bail for almost four and half years and during this period there is no complaint of misuse of liberty by the applicant, bail may be granted.

5) The learned APP, on the other hand, strongly opposed the application, it is submitted that the application of the applicant was rejected by this Court on merit on 22nd February, 2019 and, therefore, on merit this Court cannot entertain successive bail applications unless there are change in circumstances. It is submitted that the offence is very serious, and since the trial has already been commenced, this Court may not be grant bail to the applicant.

6) The learned Counsel for the intervener reiterates the submissions of the learned APP and submits that the applicant cannot ask for temporary bail for an indefinite period once the application was rejected on merit. He accordingly prays for rejection of the present application.

7) Having gone through the charge-sheet and relevant material collected by the Investigating Officer and the orders passed earlier by this Court and the learned trial Court, it is evident that this Court while rejecting the first application of the applicant on 22nd February, 2019

granted liberty to the applicant to approach the Sessions Court, if the charge in the case is not framed within the period of six months from the date of order.

8) Thereafter, the learned trial Court while granting temporary bail has categorically observed that on many dates the police did not produce the applicant in the Court, hence, the charge could not be framed in six months after the order of this Court. The said reason is not attributable to the applicant.

9) Thereafter, the applicant was on bail on 22nd October, 2019 till 10th January, 2024 during which period there was not a single complaint of misuse of liberty. The applicant is a lady having two minor children .

10) In the above referred backdrop, it is further important to note that there are about 50 witnesses, and till date only two witnesses have been examined.

11) In view of the liberty granted by this Court to the applicant to apply afresh, it cannot be said that the successive bail application is not maintainable. The Hon'ble Supreme Court of India in the case of *Sheikh Javed Iqbal @ Ashfaq Ansari @ javed Ansari vs. State of Uttar Pradesh*)¹, has observed thus:

“23. This Bench in a recent decision dated 03.07.2024 in Javed Gulam Nabi Shaikh Vs. State of Maharashtra, Criminal Appeal No. 2787 of 2024, has held that howsoever serious a crime may be, an

accused has the right to speedy trial under the Constitution of India. That was also a case where fake counterfeit Indian currency notes were seized from the accused-appellant. He was investigated by the National Investigating Agency (NIA) under the National Investigating Agency Act, 2008 and was charged under the UAP Act alongwith Sections 489B and 489C IPC. He was in custody as an undertrial prisoner for more than four years. The trial court had not even framed the charges. It was in that context, this Court observed as under:

9. 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.

23.1. After referring to various other decisions, this Court further observed as follows:

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.

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26. Angela Harish Sontakke Vs. State of Maharashtra is a case where the accused-appellant was charged under various provisions of the UAP Act as well as under the IPC. He sought for bail. This Court observed that, undoubtedly, the charges are serious but the seriousness of the charges will have to be balanced with certain other facts like the period of custody suffered and the likely period within which the trial can be expected to be completed. In that case, it was found that the appellant-accused was in custody since April, 2011 i.e. for over five years. The trial was yet to commence. A large number of witnesses were proposed to be examined. It was in that context that

the appellant-accused was directed to be released on bail.

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30.1. Thereafter, this Court held as follows:

7.1. We are dealing with a case of the accused whose guilt is yet to be established. So long as he is not held guilty, the presumption of innocence is applicable. He cannot be deprived of all his rights guaranteed under Article 21.....

12) In view of the above referred observations of the Hon'ble Supreme Court of India and considering the fact that there is unlikelihood of conclusion of trial within the reasonable period or near future and since I am of the opinion that the further custody of the applicant is not necessary, I pass the following order.

ORDER

- i. The Bail Application is allowed;
- ii. It is directed that the Applicant shall be released on bail in Crime No. 52 of 2018 registered with Khopoli Police Station, for the offences punishable under Sections 302 and 120-B read with Section 34 of the Indian Penal Code, 1860, on furnishing

P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand) with one solvent surety in the like amount;

iii. The applicant shall attend on 1st and 16th day of each month between 10:00 am and 12:00 noon, till conclusion of the trial; except on the date of trial.

iv. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;

v. Liberty is granted to the State for cancellation of bail in case the applicant does not co-operate the trial Court in trial;

vi. The Applicant shall attend the trial before the Trial Court regularly on every date unless exempted by the Trial Court for any reason.

vii. Application stands disposed of, accordingly.

[ANIL S. KILOR, J.]