

State of Maharashtra ... Respondent

framed. There are total 30 witnesses and thus considering the pace with which the trial is proceedings, there is no end of the trial in sight.

4. The Hon'ble Supreme Court of India in the case of in the case of '*Mohammad Muslim @ Hussain vs. State (NCT of Delhi)*¹ has observed thus:

".....19. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is "not guilty of such offence" and that he is not likely to commit any offence while on bail. What is meant by "not guilty" when all the evidence is not before the court? It can only be a 18 As per the counter-affidavit dated 21.02.2023 filed by the respondent-state before this court. prima facie determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself

1 (2023) SCC Online 352

principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws – be balanced against the public interest.

24....There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal”²² (also see Donald Clemmer’s ‘The Prison Community’ 20 National Crime Records Bureau, Prison Statistics in India https://ncrb.gov.in/sites/default/files/PSI-2021/Executive_ncrb_Summary-2021.pdf 21 1993 Cri LJ 3242 22 Working Papers - Group on Prisons & Borstals - 1966 U.K. published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.

5. The Hon’ble Supreme Court of India in the case of ‘*Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh*’², 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

² (2024) SCC Online SC 1755

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.....

32. This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.”

7. Considering the above referred observations made by the Hon’ble Supreme Court of India and the fact that the applicant is in jail from last 5 years and there is no end of the trial in sight, I am of the opinion that though the learned APP is strongly opposing the application, the bail should be granted by imposing certain stringent conditions to avoid any possibility that if the applicant is released on bail he would commit the similar offence.

8. At this stage, the learned counsel for the applicant, on instructions, submits that the applicant is ready to abide by any

conditions, including the condition not to enter into territorial jurisdiction of Pune District.

9. Accordingly, I pass the following order:

ORDER

- (i) Criminal Bail Application is allowed and disposed of;
- (ii) It is directed that the applicant shall be released on bail in Crime No.461 of 2019, registered with Baramati Police Station, Pune Gramin for the offences punishable under Sections 394, 307, 386, 427, 504, 506 r/w 34 of the Indian Penal Code, Section 4(25) of the Arms Act and Sections 3(1)(ii) and 3(4) of the Maharashtra Control of Organized Crimes Act, on furnishing PR.Bond of Rupees Twenty-five Thousand with solvent surety in the like amount;
- iii) The applicant shall not enter into the territorial jurisdiction of Pune District, till the conclusion of the trial, except on the date of trial;
- iv) The applicant shall provide his address and name of the nearby police station to the IO, which he shall attend on 1st and 16th day of every month between 10.00a.m. to 11.00a.m., till the conclusion of the trial except on the date of trial;

- v) 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;
- vi) Liberty is granted to the State for cancellation of bail if the applicant commit similar offence;
- vii) The applicant shall attend the trial before the Trial Court regularly on every date unless exempted by the trial Court for any reason.

(ANIL S. KILOR, J)