

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

CRIMINAL BAIL APPLICATION NO. 899 OF 2024

Sharad @ Shreya Arksha Kale ...Applicant

Vs.

The State of Maharashtra ...Respondent

**SAYALI
DEEPAK
UPASANI**

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UPASANI
Date: 2024.07.04
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Mr. Shailesh Kharat, Advocate for Applicant.

Mrs. Geeta P. Mulekar, APP for State-Respondent.

Mr. Mahesh Dongare, PSI, Shikrapur Police Station, Present.

CORAM:- ANIL S. KILOR, J.

DATED:- 3rd JULY, 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.383 of 2015 registered with Shikrapur Police Station, District: Pune, for the offences punishable under Sections 302, 394 and 397 read with Section 34 of Indian Penal Code (for short 'IPC') and Sections 3(1)(ii) and 3(4) of Maharashtra Control of Organized Crime Act, 1999 (for short 'MCOCA Act').

Sayali Upasani

3) This is the case wherein the applicant is in jail from eight and half years and there is no progress in the trial as it ought to have been after laps of a period of eight and half years. It is pointed out that there are total 53 witnesses and till date only four witnesses have been examined. Thus, considering the pace with which the trial is proceeding, there is no possibility that in near future the trial would be concluded. Moreover, there are no antecedents against the applicant, for the reason that there was only one offence is registered against him in past in which he was acquitted.

4) In the circumstances, it is profitable to refer the judgment of the Hon'ble Supreme Court of India in the case of *Mohd. Muslim Vs. State (NCT of Delhi)*¹, wherein it is held thus :-

"...18. 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 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, Code of Criminal Procedure) 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

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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 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.

21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were under trials.

23. 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"⁹ (also see Donald Clemmer's 'The Prison Community' published in 1940¹⁰). 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) In a case of *Iqbal Ahmed Kabir Ahmed Vs. State of Maharashtra*², the Division Bench of this Court has held thus:-

“...39. This right to speedy trial, in the prosecutions where the special enactments restrict the powers of the Court to grant bail, faces a competing claim of the interest of society and security of State. In such prosecutions, if the trials are not concluded expeditiously, the procedure which deprives the personal liberty for an inordinate period is then put to the test of fairness and reasonableness, envisaged by Article 21 of the Constitution. Where the period of incarceration awaiting adjudication of guilt become unduly long, the right to life and the protection of fair and reasonable procedure, envisaged by Article 21, are jeopardized.

41. The aforesaid judgment was referred with approval, by the Supreme Court in the case of K.A. Najeeb (supra) wherein the Supreme Court while emphasizing that under trials cannot be indefinitely detained pending trial, expounded in clear terms that once it is found that timely conclusion of trial would not be possible and accused has suffered incarceration for a significant period of time, the Court would be obligated to enlarge the accused on bail. The observations in paragraph 15 and 17 are instructive and thus extracted below:

15] 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, it was held that under trials 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.

.....

44. *In the aforesaid view of the matter, in our considered opinion, the further incarceration of the appellant, in the face of extremely unlikely situation of the trial being completed in near future, would be in negation of the protection of life and personal liberty under Article 21. The denial of bail, in such circumstances would render the procedure not only unreasonable but unconscionable as well....”*

6) In the light of above observations, considering the fact that the applicant is in jail for more than eight and half years and till date the only four witnesses have been examined out of 53 witnesses. Therefore, it is difficult to anticipate when the trial would come to an end. Hence, in the above-referred facts and circumstances and considering the period of incarceration of the applicant, I am of the opinion that this is a fit case for grant of bail to the applicant.

ORDER

- i) The Criminal Bail Application is allowed.
- ii) It is directed that the applicant shall be released on bail in connection with Crime No.383 of 2015 registered with Shikrapur Police Station, District: Pune, for the offences

punishable under Sections 302, 394 and 397 read with Section 34 of Indian Penal Code (for short 'IPC') and Sections 3(1)(ii) and 3(4) of Maharashtra Control of Organized Crime Act, 1999 (for short 'MCOC Act'), on furnishing PR. Bond of Rs.25,000/- (Rupees Twenty-Five Thousand) with solvent surety in the like amount;

- iii) The applicant shall attend the said Police Station on 1st and 16th day of each month between 12:00 noon and 2:00 p.m., till the 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 to apply for cancellation of bail in case the applicant commits the similar offence.
- vi) The applicant shall attend the trial before the trial Court regularly on every date unless exemption is granted by the trial Court.

The Criminal Bail Application is **disposed of** accordingly.

[ANIL S. KILOR, J.]