

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1982 OF 2024

Narayan Rameshchandra Dutta .. Applicant
Versus
The State of Maharashtra .. Respondent
...

Ms.Misbaah Solkar for the applicant.
Mr.S.V. Gavand, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 23rd AUGUST, 2024

P.C:-

1 As directed earlier, the learned APP Mr.Gavand has placed on record the order passed by the learned Single Judge in Writ Petition St. No.5541/2024 in case of State of Maharashtra Vs. Mangesh Shaligram @ Shalikram Yadav and ors.

 While quashing and setting aside the impugned order dated 8/2/2024, the case is restored at the stage of adducing of evidence by the prosecution where it was closed.

 The prosecution is now permitted to take all steps to secure the presence of the witnesses by issuing necessary process including issuance of bailable warrant and non-bailable warrant, if the need so arises.

2 In paragraph no.7 of the order, the learned Single Judge has taken note of the earlier order passed on 7/4/2022 where the hearing of the case was expedited and it was expressed that endeavour should be made to conclude the trial within a period of one year.

Once again, this request is made to the learned Special Judge to conclude the trial within six months.

2 The learned counsel Ms.Misbaah Solkar appearing for the applicant however, has expressed serious doubt about the endeavour to conclude the trial, as according to her, 15 to 16 witnesses are yet to be examined.

Further, she would submit that after this stage is over, 12 accused will have to undergo the process under Section 313 of Code of Criminal Procedure, and thereafter, arguments on behalf of the prosecution and the accused persons will be heard and therefore, she aired her apprehension about the trial to be concluded within a period of six months.

3 Here is an applicant, who is incarcerated since the year 2019, as upon invoking the provisions of the MCOCA, he was again re-arrested.

4 Ms.Solkar has placed reliance upon an order passed by this Court in case of co-accused Karan Vishnu Jalpur (BA No.1240/2023) on 4/4/2024 when this Court, by referring to the verdict of the Apex Court in case of *Union of India Vs. K.A.*

Najeeb,¹ on the ground of prolonged incarceration without trial, was pleased to release the applicant on bail.

4 We must refer to the recent verdict of the Apex Court, in case of *Manish Sisodia Vs. Enforcement Directorate*,² and in particular, paragraph nos.52 and 53, when the Apex Court once again has reiterated the need for expeditious conclusion of the trial and on failure to do so, it has been held to be violative of fundamental rights of an accused, by observing as under :-

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

"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 Russell, 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”.

1 2021(3) SCC 713

2 2024 SCC Online SC 1920

The long incarceration of the applicant, since 2019, itself entitle his enlargement on bail without touching the merits of the matter. Whatsoever may be the gravity and nature of the accusations, since it is a well recognized principle that he shall not be detained indefinitely as an under-trial prisoner, pending the trial and in the present case, though the trial is in progress, it is moving at a snail speed and since it is not possible to conclude the trial within a period of six months, despite a specific direction issued by this Court, I deem it appropriate to pass the following order:-

ORDER

- (a) Application is allowed.
- (b) Applicant Narayan Rameshchandra Dutta shall be released on bail in C.R.No. 347/20216 registered with Central Police Station, Ulhasnagar, Mumbai on furnishing P.R. Bond to the extent of Rs.25,000/- with one or more sureties in the like amount.
- (c) The applicant shall mark his attendance on first Monday of every trimester between 10:00 a.m to 12:00 noon to the Central police station, Ulhasnagar and make him available as and when required by the Investigating Officer.
- (c) The Applicant shall attend the trial on regular basis.
- (e) The applicant shall provide his current address, telephone number, place of residence and intimate about the change if any, to the concerned Investigating Officer.

(f) The applicant shall not travel outside the jurisdiction of the Trial Judge without his prior permission and shall also deposit his passport with the Investigating Officer, if any.

(g) The applicant 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 applicant shall not tamper with evidence.

(SMT. BHARATI DANGRE, J.)