

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2145 OF 2024

Mohammed Aun Javed Haider Sayed ... Applicant
Vs.
The NCB Mumbai and another ... Respondents

Mr. Mandar Goswami for Applicant.

Mr. Shreeram Shirsat a/w. Ms. Karishma Rajesh, Mr. Shekhar Mane and Mr. Nikhil Daga for Respondent No.1-NCB.

Mr. Sagar R. Agarkar, APP for Respondent-State.

CORAM : MANISH PITALE, J.
DATE : AUGUST 08, 2024

P.C. :

. This is the second bail application filed by the applicant, who is accused No.7 in the present case. It is relevant to note that earlier application bearing Criminal Bail Application No.3041 of 2021 was dismissed by this Court (Coram: Nitin W. Sambre, J.) by an order dated 15.11.2021. The contentions raised on behalf of the applicant were considered on merits and after rendering specific findings in paragraph 6 of the said order, the application was rejected. The said order was challenged before the Supreme Court by filing Special Leave to Appeal (Criminal) No.1775 of 2022. The said Special Leave Petition was dismissed as withdrawn on 29.08.2022. The statement made by the counsel appearing for the applicant before the Supreme Court was recorded and liberty was granted to renew the prayer for bail before the trial court after some time.

2. Thereafter, the applicant moved the Special Court, NDPS for bail. But, by order dated 04.05.2024, the Special Court, NDPS dismissed the application after discussing the contentions raised on behalf of the

applicant on merits. It was found that the applicant failed to satisfy the rigours of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

3. In these circumstances, the applicant cannot be allowed to have another round of arguments on merits, unless there is a change in circumstance pointed out on his behalf. The only circumstance that is put forth on behalf of the applicant is long incarceration since he was arrested on 25.01.2021.

4. It is submitted by the learned counsel appearing for the applicant that since the applicant has already suffered incarceration for slightly more than 3 ½ years and the prosecution has not yet examined a single witness, bail may be granted only on the said ground.

5. On the other hand, the learned APP submits that in the present case, the trial has begun as evidence is being recorded. Although the list of witnesses shows 54 witnesses, the prosecution will be examining only 30 witnesses. It is further pointed out that the first witness was to be examined and the evidence was to be recorded, but for an objection taken on behalf of the applicant that the evidence ought not to be recorded as the said witness was in the office of the NCB at Rajasthan on 23.07.2024. The proceeding was adjourned so that the witness could remain present before the Court in Rajasthan. It is further submitted that by order dated 08.05.2024 passed by this Court (Coram : Prithviraj K. Chavan), extension of time of one year has been granted for completing the trial. It is submitted that therefore, this Court may not entertain the prayer made in the present application.

6. This Court has considered the rival submissions. There is no doubt about the fact that the applicant has remained behind bars since 25.01.2021. But, the aforesaid factor would inure to the benefit of the

applicant only if there are circumstances to conclude that the trial would not be completed in a reasonable period of time. The factors brought to the notice of this Court on behalf of the prosecution indicate that this Court may not be able to reach a finding that the trial cannot be concluded within a reasonable period of time as the prosecution intends to examine only 30 witnesses. The first witness is in the process of being examined. This Court has granted extension of time by one year by order dated 08.05.2024 to conclude the trial. The learned APP for the prosecution has indicated that all efforts would be made to complete the trial well before the extended period of time. In this regard, co-operation on the part of the accused persons is also necessary.

7. Right to speedy trial, as a facet of Article 21 of the Constitution of India, has been recognized in various judgements of the Supreme Court and this Court. Long period of incarceration, coupled with remote possibility of the trial being completed within a reasonable period of time can give rise to a situation where this Court, as a Constitutional court, can exercise power to grant bail to the applicant *dehors* the merits of the matter.

8. As noted hereinabove, on the merits of the matter, this Court has already held against the applicant in the earlier round. The second limb of the aforementioned requirement for this Court, as a Constitutional court, to exercise power in favour of the applicant is not satisfied, for the reason that from the material brought to the notice of this Court, it cannot be said that there is remote possibility of the trial being completed within a reasonable period of time.

9. It appears that since the recording of evidence has commenced and the prosecution is to examine only 30 witnesses, as also the fact that this Court has granted extension of time only for one year to complete the trial, the trial can be completed within a reasonable period of time.

Therefore, the prayer made in the present application is rejected.

10. Needless to say, if for any reason, the trial is not completed within the extended period of time and the delay is not attributable to the applicant, liberty is reserved to the applicant to renew his prayer for bail.

(MANISH PITALE, J.)

Minal Parab