

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

CRIMINAL BAIL APPLICATION NO. 2153 OF 2024

Nitesh Vinayak Sabale

...Applicant

Vs.

The State of Maharashtra

...Respondent

Mr. S. S. Dongre, Advocate for Applicant.

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

CORAM:- ANIL S. KILOR, J.

DATED:- 30th AUGUST, 2024

PG:-

1) Heard.

2) By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No. 284 of 2015 registered with Sahakar Nagar Police Station, Pune for the offences punishable under Sections 302, 364, 201, 323 and 120-B read with Section 34 of the Indian Penal Code, 1860 and Sections 3(1)(i) and 3(4) of Maharashtra Control of Organised Crime Act, 1999.

3) The applicant is in jail from last eight years and ten months and if the status of the trial is considered till date not a single witness out of total 23 witnesses is examined. Thus, there is no end of the trial in sight. Furthermore, as far as the antecedents are concerned, the learned

Counsel for the applicant states that he has been acquitted in three cases.

4) The Hon'ble Supreme Court of India, 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 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.

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1 2023 SCC OnLine 352

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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](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) In view of the above referred observations of the Supreme Court of India, considering the total period of incarceration of the applicant and the fact that there is no end of trial in sight, I am of the opinion that the applicant is entitled for grant of bail. Hence, 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. 284 of 2015 registered with Sahakar Nagar Police Station, Pune, for the offences punishable under Sections 302, 364, 201, 323 and 120-B read with Section 34 of the Indian Penal Code, 1860 and Sections 3(1)(i) and 3(4) of Maharashtra Control of Organised Crime Act, 1999, on

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

iii The applicant shall not enter into the territorial jurisdiction of Sahakar Nagar Police Station, Pune City 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 I.O, which he shall attend the said Police Station on 1st day of every month between 12.00 noon to 2.00 p.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 to apply cancellation of bail in case of any breach of condition or commission of 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.

viii. Application stands disposed of, accordingly.

[ANIL S. KILOR, J.]