

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

CRIMINAL BAIL APPLICATION NO. 2573 OF 2024

Mohammad Ahmed Choudhary @ Babu ...Applicant

Versus

The State of Maharashtra ...Respondent

....

Mr. Sunny Singh, Advocate for the Applicant.

Mrs. Savita Yadav, APP for the Respondent – State.

....

CORAM : ANIL S. KILOR, J.

DATE : 7th AUGUST, 2024.

P.C.:

1. Heard.

2. By this application under Section 439 of the Code of Criminal Procedure, the Applicant is seeking bail in Crime No.236 of 2015, registered with Rabale MIDC Police Station, District: Navi Mumbai for the offences punishable under Sections 302, 201 r/w 34 of Indian Penal Code (for short 'IPC') and Sections 4, 25(1-B)(b) of Arms Act, 1959.

3. In this case the Applicant is in jail from last about eight years and the pace with which the trial is proceeding, there is no end of the trial in sight in near future.

4. The Hon'ble Supreme Court in the case of *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh*¹ 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 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.

¹ (2024) SCC Online SC 1755

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.....

5. Thus, considering the above referred observation and fact of period of incarceration, I am of the opinion that the Applicant is entitled for grant of bail.

6. As far as apprehension of the APP, if that the Applicant is released on bail, he may pressurized the prosecution witnesses. The same can be addressed by imposing certain stringent conditions. Hence, I pass the following order;

ORDER

- i. Criminal Bail Application No.2573 of 2024 is allowed;
- ii. It is directed that the Applicant shall be released on bail in Crime No.236 of 2015, registered with Rabale MIDC Police Station, District: Navi Mumbai for the offences punishable under Sections 302, 201 r/w 34 of IPC and Sections 4, 25 (1-B)(b) of Arms Act, 1959, on furnishing PR. Bond of Rupees Twenty Five Thousand with one solvent surety in the like amount;
- iii. The Applicant shall not enter within the territorial jurisdiction of Rabale MIDC Police Station, District : Navi Mumbai till conclusion of trial except for attending trial;

- iv.** The Applicant shall provide his address and the name of near by Police Station to the Investigating Officer which he shall attend on 1st and 16th day of each month between 12:00 noon to 1:00 pm except for attending 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 for cancellation of bail if the Applicant commits 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 off, accordingly.

(ANIL S. KILOR, J.)