

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2917 OF 2024

Kishor Raman Yadav	...	Applicant
Vs.		
State of Maharashtra	...	Respondent

WITH
BAIL APPLICATION NO.2747 OF 2024

Amit Harish Dave	...	Applicant
Vs.		
State of Maharashtra	...	Respondent

Mr. Kamlesh Narottam Gujar for Applicant in BA/2917/2024.
Mr. Sandeep R. Karnik for Applicant in BA/2747/2024.
Mr. Tanveer G. Khan, APP for Respondent-State in both the Applications.
Mr. Chetan Pachherwal, PSI, EOW, Unit III.

CORAM : MANISH PITALE, J.
DATE : SEPTEMBER 05, 2024

P.C. :

1. Heard learned counsel for the applicants and the learned APP for the respondent-State in both the applications.

2. In these two applications, the applicants are seeking bail as they were arrested on different dates in the years 2019 and 2022. They have remained behind bars since their respective dates of arrest.

3. The FIR, in the present case, was initially registered as FIR No.426 of 2016 at Amboli Police Station, Mumbai, for offences under Sections 406, 409, 420, 465, 467, 468, 471 read with Section 120-B of the Indian Penal Code, 1860 (IPC). Subsequently, the offence was registered with the Economic Offences Wing (EOW) as FIR No.100 of 2016.

4. The allegations against the applicants and the third co-accused person pertain to siphoning off huge amounts by illegally facilitating overdraft facilities on fixed deposits. The third co-accused person, who is not before this Court, is a bank employee and the allegation is that the applicants in these two applications conspired with the third co-accused person to indulge in such activities, resulting in registration of the aforesaid offences. The investigation was completed and charge-sheet was filed, but it is an admitted position that till date, charge has not been framed.

5. The applicant in Bail Application No.2747 of 2024 was arrested on 23.05.2022 and the applicant in Bail Application No.2917 of 2024 was arrested on 19.12.2019. Consequently, the applicants have remained behind bars from their respective dates of arrest.

6. The learned counsel for the applicants submit that the charge having not been framed till date, there is remote possibility of the trial even commencing, much less being completed within a reasonable period of time. It is submitted that the Supreme Court has laid down in a series of judgements and orders that in such situations where the under-trial accused persons have suffered incarceration for considerable period of time and there is no possibility of the trial being completed within the foreseeable future, Constitutional Courts can exercise power to release the accused under-trials on bail, as bail is the rule and jail is an exception. It is submitted that no purpose would be served in continuing the judicial custody of the applicants, as further incarceration of the applicants would amount to punishing them even before their cases are considered on merits.

7. The investigation having been completed much earlier point in time, it is submitted that continuing custody of the applicants cannot be justified and in that regard, learned counsel appearing for the applicant

in Bail Application No.2747 of 2024 relies upon a recent order passed by the Supreme Court on **27.08.2024** in the case of *Abdulmajid Abdulsattar Memon Vs. State of Gujarat (Criminal Appeal No.3525 of 2024)*. It is emphasized that even in the said case, the Supreme Court took note of the fact that the offences in the said case were triable before the Magistrate and relief was granted, despite the petitioner before the Supreme Court having criminal antecedents.

8. On the other hand, the learned APP has vehemently opposed the present applications. It is submitted that there is ample material against both the applicants on merits. The statements of witnesses and the documentary material on record indicate the direct involvement of the applicants in serious offences registered in the present case. It is submitted that both the applicants in connivance with the co-accused bank official indulged in such serious offences.

9. It is further submitted that in the present case, one of the offences registered against the accused persons is under Section 467 of the IPC, which provides for maximum punishment of imprisonment for life. This aspect may be taken into consideration. As regards the applicant in Bail Application No.2747 of 2024, it is submitted that he has six other antecedents.

10. At this stage, the learned counsel appearing for the applicant in Bail Application No.2747 of 2024 submitted that in five out of six cases pending against the said applicant, he has been released on bail.

11. This Court has considered the rival submissions. Considering the tenor of the submissions made on behalf of the applicants, the prayers made on behalf of the applicants are required to be considered on the aspect of the period of incarceration suffered and the progress of the proceedings before the concerned Court.

12. In the present case, it is an admitted position that even charge has not been framed. The charge-sheet shows that 49 witnesses have been cited to be examined by the prosecution. Hence, there is considerable force in the contention raised on behalf of the applicants that there is no possibility of the trial being completed within a reasonable period of time. In fact, it appears that the commencement of the trial in the foreseeable future is also doubtful.

13. It is also an admitted position that the applicant in Bail Application No.2747 of 2024 has suffered incarceration for more than two years and three months, while the applicant in Bail Application No.2917 of 2024 has suffered incarceration for about four years and nine months. It is also a matter of record that the offences registered against the accused persons, including the applicants in the present case, are triable before the Magistrate.

14. It is to be noted that in similar circumstances, where the case was a Magistrate triable case, the Supreme Court in the aforesaid recent order passed in the case of Abdulmajid Abdulsattar Memon Vs. State of Gujarat (supra) granted bail to the accused under-trial, while he had undergone custody for only about one year and three months.

15. In view of the above, without commenting upon the merits of the matter, this Court is inclined to allow the present application. Accordingly, the application is allowed in the following terms:-

- (A) The applicants - Kishor Raman Yadav and Amit Harish Dave shall be released on bail in connection with offence registered with EOW bearing C.R.No.100 of 2016 (initially registered as FIR No.426 of 2016 at Amboli Police Station), on furnishing P.R. Bond of Rs.1,00,000/- each with one or two sureties in the like amount to the satisfaction of the trial

Court;

- (B) The applicants shall report to the office of the EOW, Mumbai on the second and fourth Monday of every month during the pendency of the trial;
- (C) The applicants shall cooperate with the trial Court for expeditious trial and they shall attend each and every date, unless exempted for reasons to be recorded in writing;
- (D) The applicants shall not tamper with the evidence of the prosecution. They shall not influence the informant, witnesses or any other person concerned with the case;
- (E) The applicants shall surrender their passports, if any, with the trial Court;
- (F) Upon being released on bail, the applicants shall immediately, and in any case within a week, furnish the details of their active mobile numbers and residential addresses to the trial Court and update about the same, if there is any change.

16. Needless to say, violation of any of the aforesaid conditions would make the applicants liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicants in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

17. The bail applications stand disposed of accordingly.

(MANISH PITALE, J.)