

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL BAIL APPLICATION NO.2806 OF 2024**

Mohd. Shaikh @ Salim @ Khwaja      ...      Applicant  
Pir Moh. Shaikh

V/s.

The State Of Maharashtra      ...      Respondent

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Mr. Vikas Kolekar with Monica Dushmika and Kunal Shirgive, for the applicant.

Ms. Geeta Mulekar, APP, for the Respondent / State.

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**CORAM    :    ANIL S. KILOR, J.**

**DATE    :    21ST OCTOBER, 2024.**

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**PC:**

1.            Heard.
2.            By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No.252 of 2018, registered with Kharghar Police Station, Navi Mumbai for the offences punishable under Sections 392 and 34 of the Indian Penal Code and Section 3(1)(ii), 3(2), and 3(4) of the Maharashtra Control of Organised Crime Act, 1999.
3.            The applicant is in jail from last 5 years and 10 months and considering the nature of the allegations and the evidence against the applicant, I am of the opinion that on the ground of long incarceration

and for the reason that there is no end of the trial in sight, the applicant is entitled for grant of bail, in view of the judgment of the Hon'ble Supreme Court of India, in the case of '*Sheikh Javed Iqbal @ Ashfaq Ansari @ javed Ansari vs. State of Uttar Pradesh*')<sup>1</sup>, wherein it 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*

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1 (2024) SCC Online SC 1755

*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.*

*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.*

*24. -----*

*25. -----*

*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.....*

*32. This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.”*

8. In view of the above referred observations, I pass the following order:

**ORDER**

- i) Criminal application is allowed;
- ii) It is directed that the applicant be released on bail in Crime No.252 of 2018, registered with Kharghar Police Station, Navi Mumbai for the offences punishable under Sections 392 and 34 of the Indian Penal Code and Section 3(1)(ii), 3(2), and 3(4) of the Maharashtra Control of Organised Crime Act, 1999, on furnishing P.R.Bond of Rupees Twenty-Five Thousand with one solvent surety in the like amount;
- iii) The applicant shall not enter into Mumbai and territorial jurisdiction of Kharghar Police Station, Navi Mumbai, till the conclusion of the trial;
- iv) The applicant shall provide their address and name of the nearby police station to the IO, which they shall attend the said Police Station on 1st and 16<sup>th</sup> day of every month between 10.00a.m. to 11.00 a.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 for

cancellation of bail in case of any breach of condition or if the applicant commits similar offence;

vii) The applicant shall attend the trial before the trial Court regularly on every date unless exemption is granted by the trial Court.

9. The application is disposed of.

(ANIL S. KILOR, J)