

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3474 OF 2024**

Zulfikar @ Zulfi Yasin Behlim	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Ravi Dwivedi a/w. Mr. Sainath S. Baji and Mr. Satish R. Shukla for applicant.

Ms. Megha S. Bajoria, APP for respondent-State.

Mr. Sachin S. More, H.C., ACP, Bandra Division a/w. Mr. Hemant Miraje, PSI.

**CORAM : MANISH PITALE, J.
DATE : 02nd DECEMBER, 2024**

P.C. :

. Heard learned counsel for the applicant and the learned APP for the respondent-State.

2. The applicant is seeking bail in connection with FIR No.394 of 2016 dated 27.07.2016, registered at Santacruz Police Station, Mumbai, for offences under Sections 302, 449, 120-B, 307, 143, 144, 147 and 149 of the Indian Penal Code, 1860 (IPC); Sections 3, 4, 25 and 27 of the Indian Arms Act, 1959 and Sections 37(1) and 135 of Maharashtra Police Act, 1951.

3. The applicant was arrested on 17.09.2016 on the allegation of being part of conspiracy of committing murder of the victim. It is to be noted that on 09.09.2016, provisions of Maharashtra Control of Organized Crime Act, 1999 (MCOC Act) were also invoked and thereafter, the applicant was arrested.

4. The learned counsel for the applicant submits that there is no allegation of the applicant being one of the assailants. It is fairly pointed out that this is the third bail application of the applicant before this Court. The

first bail application was disposed of by an order dated 30.01.2023 and the subsequent bail application was disposed of by order dated 02.04.2024. Hence, the learned counsel for the applicant has not advanced any contention on the merits of the matter. But, he submits that despite the directions given in the order passed by this Court, the trial has not progressed substantially and only 15 witnesses have been examined, while the charge-sheet shows that the prosecution intends to examine 129 witnesses. It is submitted that the applicant has remained behind bars for substantial period of time and even prior to this, the applicant was behind bars in an earlier case, where he was punished with imprisonment for 5 years, which he has already undergone. In such circumstances, it is submitted that the applicant may be enlarged on bail, as he undertakes to abide by the conditions that may be imposed by this Court.

5. On the other hand, the learned APP highlights that in the earlier bail Application bearing No.2546 of 2022, which was disposed of on 30.01.2023, this Court had considered the merits of the matter and since this Court was against the applicant, permission was sought to withdraw the application with request for appropriate directions to expedite the trial. It was further submitted that liberty was reserved for the applicant to apply afresh for bail, after a period of one year. Similarly, while disposing of the subsequent bail application bearing No.455 of 2024, by order dated 02.04.2024, this Court had reserved the liberty to apply for bail after 4 months. It is submitted that thereafter, the trial has progressed and 15 witnesses have been examined.

6. This Court has considered the rival submissions. The undisputed position is that the FIR was registered on 27.07.2016 and the applicant was arrested on 17.09.2016. He has, therefore, remained behind bars for more

than 8 years and 2 months. The charge in the present case, was framed as far back as on 10.11.2021. The list of witnesses in the charge-sheet shows that the prosecution intends to examine 129 witnesses. Even if in practical terms, fewer witnesses would be examined, the number of witnesses to be examined is substantial. It is also a matter of fact that as on today, only 15 witnesses have been examined.

7. In this backdrop, when the earlier orders passed by this Court are examined, it is noticed that on 30.01.2023, this Court had requested that the Trial Court to complete the trial preferably within a period of one year from 01.02.2023. The trial remained pending. In the light of the liberty granted to the applicant, he moved second bail application before this Court, which was disposed of by order dated 02.04.2024. It was observed in the aforesaid order that about 10 witnesses have been examined and liberty was reserved for the applicant to apply afresh after 4 months, as the trial appeared to be progressing.

8. It is also an admitted position that as on today, despite elapse of almost 2 years from the first order, disposing of the bail application of the applicant, only 15 witnesses have been examined. Considering the number of witnesses proposed to be examined by the prosecution, this Court finds that even if directions to expedite the trial are given, there is remote possibility of the trial being completed within reasonable period of time.

9. The applicant has remained behind bars in the context of the present case, for more than 8 years and 2 months, which certainly can be said to be a period of long incarceration.

10. The Supreme Court has repeatedly laid down the position that in such

situations, when there is remote possibility of the trial being completed within reasonable period of time and the accused undertrials have suffered long incarceration, the Constitutional Courts ought to exercise their power to grant bail to such undertrials.

11. In the case of *Javed Gulam Nabi Shaikh vs. State of Maharashtra and another* (2024 SCC OnLine SC 1693), after referring to earlier judgements in this regard, including judgment in the case of *Union of India vs. K. A. Najeeb* [(2021) 3 SCC 713] and *Satender Kumar Antil vs. Central Bureau of Investigation and another* [(2022) 10 SCC 51], the Supreme Court held that even in cases concerning special statutes, like MCOC Act in the present case, wherein a higher threshold is required to be satisfied by the accused undertrial for being enlarged on bail, in the face of such situation of long incarceration and remote possibility of the trial being completed within reasonable period of time, the Constitutional Courts must exercise their power to enlarge the accused undertrials on bail.

12. This Court is satisfied, without any reference to the merits of the matter, that in the facts of the present case and in the light of the data referred to hereinabove, this is a case where the Constitutional Court like this Court, ought to exercise its power to enlarge the applicant on bail by imposing appropriate stringent conditions on the applicant.

13. In view of the above, the application is allowed in the following terms:

- (i) The applicant shall be released on bail in connection with FIR No.394 of 2016 dated 27.07.2016, registered at Santacruz Police Station, Mumbai, on furnishing PR Bond of ₹ 50,000/- and one or two sureties in the like amount to the satisfaction of the Trial Court, if not required in any other case.

- (ii) The applicant, upon being released on bail, shall report to Nayanagar Police Station, Mira Road, District Thane, on first and third Monday of each month between 10:00 a.m. and 12:00 noon during the pendency of trial.
- (iii) The applicant shall not enter the jurisdiction of Santacruz Police Station, Mumbai.
- (iv) The applicant shall surrender his passport before the investigating officer within one week from his release.
- (v) Upon release, within one week, the applicant shall inform the Investigating Officer as well as the Trial Court about his contact number and residential address and update the same in case of any change.
- (vi) The applicant shall co-operate with the trial Court in completing the proceedings expeditiously and attend the proceedings before the trial Court on each and every date, unless specifically exempted, for the reasons to be recorded in writing.
- (vii) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not undertake any action that may influence the informant, witnesses and other persons concerned with the case.

14. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions is violated.

15. It is also clarified that the observations made in this order are limited to the disposal of the present bail application and the Trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

16. The application is disposed of.

(MANISH PITALE, J)