

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3656 OF 2024

Rinku @ Ashvinkumar Kailashnath ... Applicant.
Shreevastav

V/s.

The State of Maharashtra ... Respondent.

Mr Manisha Jadhav i/b S.K.Kamble, Advocate for Applicant

Mr Sameer M. Mangaonkar, APP for the State.

PSI Gurudas R. More, Waliv P.S.

RAJIV
BABARAOJI
RAUT

Digitally signed by
RAJIV BABARAOJI
RAUT
Date: 2024.10.25
16:54:53 +0530

CORAM : ANIL S. KILOR, J.

DATED : OCTOBER 25, 2024.

PC:

1. Heard.
2. By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No.121 of 2018, registered with Waliv Police Station, District: Palghar for the offences punishable under Section 302 of the Indian Penal Code, 1860.
3. The applicant was arrested on 22/02/2018 and since then he is in jail. As regards the trial, though the charge was framed in the month of March 2021 in last three years not a single witness was examined. There are total 37 witnesses. Thus, it is evident that it

is unlikely that the trial would conclude in near future. Moreover, there are no antecedents against the applicant and the case is based on the circumstantial evidence.

4. The Hon'ble Supreme Court of India in the case of *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh*, reported in (2024) SCC OnLine SC 1755, wherein the Hon'ble Supreme Court 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.

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.

27 to 30. ...

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.”

5. Considering the above referred observations and the fact of long incarceration of the applicant, coupled with 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.

6. The learned APP, at this stage, pointed out that the applicant is from Uttar Pradesh and if he is released on bail there is likelihood that he will not be available for trial. Thereupon, the learned counsel for the applicant, on instructions, makes a statement that the applicant is ready to give local surety.

7. In the circumstances, I pass the following order :
 - i) The Criminal Application is allowed.

- ii) It is directed that the applicant shall be released on bail in connection with Crime No.121 of 2018, registered with Waliv Police Station, District: Palghar for the offences punishable under Section 302 of the Indian Penal Code, 1860, on furnishing P.R.Bond in the sum of Rupees Twenty Five Thousand with one local solvent surety in the like amount;
- iii) The applicant shall attend the concerned Police Station on every Sunday between 10:00 am and 11:00 am, till conclusion of the trial, except on the date of the trial.
- iv) 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;
- v) Liberty is granted to the State to apply for cancellation of bail if the applicant commits similar offence or breaches any condition for grant of bail.
- vi) The applicant shall attend the trial before the trial Court regularly on every date unless exemption is granted by the trial Court.

The Criminal Application is **disposed of** accordingly.

(ANIL S. KILOR, J)