

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

BAIL APPLICATION NO. 3893 OF 2024

Jagdish Kailash Shejave Dhananjay Shinde ... Applicant
Versus
The State of Maharashtra ... Respondent

Mr. Prashant Pandey a/w Pranay Saraf, Dinesh Jadhvani, Ridhima Mangaonkar and Krishma Joshi i/by Pranay Saraf for Applicant.
Ms. Rutuja A. Ambekar (through V.C.) APP for Respondent-State.
Mr. Shriram Ghodke, API, Unit-9, Crime Branch.

**CORAM: MANISH PITALE, J.
DATE : 11th DECEMBER 2024**

P.C. :

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

2. In this application, this Court passed a detailed order on 21st October 2024, taking note of all the circumstances in the context of parity claimed by the applicant with co-accused person, who was granted bail by an order dated 2nd August 2022 passed by this Court (Coram: Bharati Dangre, J.) in Bail Application No. 1012 of 2022. In the said order, this Court found that the period of incarceration undergone by the co-accused was substantial and considering the stage of the trial, by applying the position of law clarified by the Supreme Court in such cases, granted bail to the accused persons.

3. In the aforesaid order dated 21st October 2024, this Court found that the concerned Court, where the present trial is pending, had granted time to the Special Public Prosecutor (SPP) to submit programme or schedule of examining the remaining witnesses and the said process had taken some time. In that light, specific directions were issued.

4. It is found that after the aforesaid order was passed, the SPP did tender a schedule and the examination of the witnesses recommenced. It is brought to the notice of this Court that between 25th October 2024 till date, 3 more witnesses were examined. But, it is submitted on behalf of the prosecution that 9 more witnesses are proposed to be examined. It was further specifically stated by the learned APP that accused No.1 is cross-examining witnesses himself and the process is therefore taking time, for which the prosecution cannot be blamed. It is submitted that the applicant has criminal antecedents and therefore, this Court may not show any indulgence in the matter, as the trial can be completed expeditiously.

5. On the other hand, the learned counsel for the applicant relies upon the aforesaid order passed in favour of the co-accused person, wherein bail was granted purely on the ground of long incarceration and pendency of the trial. It was submitted that the Supreme Court in various judgments has clarified the position of law in that regard. As regards the present stage of the trial, attention of this Court was invited to an order dated 27th July

2021 passed by the Supreme Court in Criminal Appeal No. 693 of 2021, wherein, despite the fact that the trial had reached the stage of recording the statement of the accused persons under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.), on the ground that the applicant therein had already undergone 8 and ½ years of incarceration, the Supreme Court found it fit to grant bail to the applicant. It was submitted that in these circumstances, this Court may consider allowing the application.

6. This Court has taken into consideration the detailed order dated 21st October 2024, passed in this application and the *Rojnama* from 25th October 2024 till 6th December 2024 is taken into consideration. The same does show that evidence of 3 more witnesses was recorded before the concerned Court. But, it is also a matter of fact that further 9 witnesses are proposed to be examined by the prosecution. Although, the proceedings before the concerned Court are being listed on every Friday, considering the pace of trial and the number of years of incarceration suffered by the applicant, this Court is inclined to favourably consider the prayer in this application.

7. The record shows that the applicant was arrested as far back as on 10th April 2012, thereby demonstrating that the applicant has already suffered incarceration for more than 12 years and 8 months. The trial being completed at the earliest, does not appear to be possible, considering the fact that the prosecution intends to examine 9 further witnesses. The Supreme Court in the case of

Javed Gulam Nabi Shaikh v/s. The State of Maharashtra, 2024 SCC OnLine SC 1693, referred to earlier judgments in the cases of *Hussainara Khatoon & Ors. v/s. State of Bihar, 1981 SCC 81*, *Kadra Pehadiya & Ors. v/s. State of Bihar, 1981 3 SCC 671*, *Union of India v/s. K. A. Najeeb, (2021) 3 SCC 713* and *Satender Kumar Antil v/s. Central Bureau of Investigation and Anr., (2022) 10 SCC 51* and thereupon held that, in such a situation where the accused under-trial has suffered long incarceration and the trial is still pending with remote possibility of it being completed at the earliest, Constitutional Courts ought to exercise their power to enlarge the accused under-trials on bail. It is significant to note that in the said case, the Supreme Court was concerned with prosecution under the Unlawful Activities (Prevention) Act, 1967, being a special statute, where a higher threshold is to be satisfied by the accused for seeking bail. In earlier judgments also the Supreme Court was concerned with special statutes and yet, it was held that the Constitutional Courts must exercise power to enlarge the accused under-trial on bail, in such conditions.

8. This Court is of the opinion that the facts of the present case justify exercise of power by this Court as a Constitutional Court to grant relief to the applicant, subject to appropriate conditions. It is to be noted that co-accused person was already granted bail on 2nd August 2022, on this very ground and therefore, the present application deserves to be allowed.

9. In view of the above, the application is allowed in the

following terms:

- (a) The applicant shall be released on bail in connection with FIR No. 44 of 2012 dated 8th April 2012 registered with DCB, CID, Unit 9, Bandra, on furnishing P.R. Bond of Rs.25,000/- and one or two sureties in the like amount.
- (b) The applicant shall report to the office of DCB, CID, Unit 9, Bandra, on first Monday of each month between 10:00 a.m. and 12:00 noon.
- (c) The applicant shall cooperate with the trial Court for expeditious trial and he shall attend each and every date, unless exempted by the trial Court, for reasons to be recorded in writing.
- (d) The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses or any other person concerned with the case.
- (e) The applicant, upon being released on bail, shall place on record of the trial Court the details of his Contact Number and residential address with updates in case of any change.

10. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled. It is also clarified that the observations made in this

order are limited to the disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

11. The application is disposed of.

MANISH PITALE, J.