

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3907 OF 2024

Ayub Alimuddin Shaikh @ Ayub @ Chikna ...Applicant
Versus

The State of Maharashtra ...Respondent

WITH
BAIL APPLICATION NO. 4101 OF 2024

Mohammad Shahtaaj Jamal Khan ...Applicant
Versus

The State of Maharashtra ...Respondent

Mr. Darshit Jain, for the Applicant in BA/3907/2024.
Mr. Deepak Gautam, for the Applicant in BA/4101/2024.
Mr. A. A. Naik, APP for the State.

CORAM: N. J. JAMADAR, J.
DATED: 5th DECEMBER, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. The applicants, who are arraigned in CR No.70 of 2019 registered with Kalachawiki Police Station, Mumbai, for the offences punishable under Sections 120B, 395, 397, 412, 341 and 201 of the Indian Penal Code, 1860 ("the Penal Code"), Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 ("MCOC Act, 1999"), Section 4 read with Section 25 of the Arms Act, 1959 and Section 37(1)(A) read with Section 135 of the Maharashtra Police Act,

1951, have preferred these applications to enlarge them on bail.

3. These are the successive applications for bail. Ayub Shaikh, the applicant in BA/3907/2023, had preferred BA/2938/2023. By an order dated 4th March, 2024 this Court had rejected the said application.

4. Mohammad Shahtaj Jamal Khan, the applicant in BA/4101/2024, had preferred BA/32/2022, the said application was dismissed as withdrawn by an order dated 10th August, 2023, while requesting the learned Special Judge to frame the charge and conclude the trial as expeditiously as possible, and in any event, within a period of one year thereof.

5. The applicants have again approached this Court asserting that the trial has yet not commenced and it is unlikely to conclude in near future.

6. The prosecution has resisted the application by filing affidavit-in-reply contending that the trial could not proceed on account of dilatory tactics of the accused. The delay in the trial is solely attributable to the applicant and the co-accused. In fact, in the intervening period, in Criminal

Appeal No.152 of 2024, the trial was stayed by the High Court in the month of April, 2024 and the stay was in operation till August, 2024.

7. To being with, it is necessary to note that while rejecting the application of Ayub Shaikh, in BA/2938/2023 this Court had considered the prayer for bail on the ground of long period of incarceration, also. The observations in paragraphs 25 to 32 read as under:

“25. In the case at hand, the applicant has been in custody since 12th April, 2019. A period of four years and 11 months has elapsed. It is necessary to note that the charge has yet not been framed despite the directions by this Court in BA No. 32 of 2022 preferred by the co-accused, to frame charge and conclude the trial as expeditiously as possible and, in any event, within a period of one year thereof. The learned APP, however pointed out that there have been efforts to delay the trial on the part of the accused. Often adjournments are sought and applications for discharge have been preferred. Thus, the charge could not be framed.

.....

27) Mr. Jain countered the submissions on behalf of the prosecution. It was urged that the accused have a statutory right to prefer an application for discharge and that cannot be arrayed against the applicant for not concluding the trial expeditiously.

28) I have perused the copies of the Roznama. The submission of Mrs. Mulekar that the accused have also contributed for the delay in framing the charge cannot be said to be wholly unfounded.

29) Undoubtedly the applicant has been in custody for almost 5 years. Offence punishable under Section 394 of the Penal Code, 1860 entails punishment which may extend to imprisonment for life. Since grievous hurt was caused to the first informant, Section 397 of the Penal Code, 1860, which provides for a minimum sentence of 7 years may come into play. Offences punishable under Section 3 (1)(ii), 3(2) and 3 (4) of the MCOC Act, 1999 entail punishment of imprisonment for life with a minimum sentence of 5 years. Thus, a balance is required to be struck between right of the accused to speedy

trial and the interest of society in having the accused tried for grave offences.

30) In my considered view since the Bail Application of the co-accused was disposed with a direction to the trial Court to conclude the trial prior August, 2024, it may be expedient to grant opportunity to the prosecution to make an effort to conduct the trial expeditiously within the said period.

31) To sum up, at this stage, the facts that the applicant is a history sheeter, the applicant has been identified by one of the eye witnesses and there has been the recovery of huge quantity of gold from the applicant and co-accused Pankaj Soni, which was allegedly sold by the applicant, incriminate the applicant.

32) Thus, in the totality of the circumstances, and having regard to the fact that the Court has already directed expeditious conclusion of the trial, I am inclined to reject the application with liberty to the applicant to revive the prayer for bail in the event the trial is not concluded by August, 2024.”

8. Evidently, even, at that stage, this Court had noted that efforts were made on behalf of the accused to delay the trial. It does not appear that subsequent to the aforesaid order dated 4th March, 2024 there has been any change in the approach of the accused. On 5th March, 2024 adjournment was sought on the ground that accused No.6 has preferred an appeal before the High Court against the order of rejection of the discharge application of accused No.6. The adjournments were sought on the same ground on 14th March, 2024 and 22nd March, 2024.

9. In Criminal Appeal No.152 of 2024 preferred by co-accused Pankaj Soni, by an order dated 3rd April, 2024, a Division Bench of this Court requested the Trial Court to

defer the hearing of the Special Case for framing of charge, till the next date. It appears Criminal Appeal No.152 of 2024 was dismissed by a Division Bench of this Court by an order dated 6th August, 2024. In the said order, the Division Bench of this Court had also noted that Sangeeta Nair (A8), the wife of Ayub Shaikh (A1), had also preferred an appeal being Criminal Appeal No.1430 of 2023 and the same was dismissed by another Division Bench of this Court, on 12th February, 2024.

10. Thus, there was stay to the proceedings in the Special Case from 3rd April, 2024 to 6th August, 2024. Charge was framed on 20th September, 2024.

11. The situation which thus obtains is that from the date of the order passed by this Court in BA/2938/2023 the Special Court could not proceed primarily for the reason that the accused sought adjournments on the ground that appeal was preferred before this Court and, subsequently, there was stay to the trial during the period 3rd April, 2024 to 6th August, 2024. In effect, the prosecution had not had the opportunity to make an effort to conclude the trial expeditiously, which the Court found, in the backdrop of the gravity of the accusation, the prosecution deserved

(paragraphs 29 and 30 of the order in BA/2938/2023 – extracted above).

12. As the aforesaid situation is brought about by the causes primarily attributable to the accused, I am afraid to accede to the submission on behalf of the applicants that they deserve to be enlarged on bail on the count of delay in trial. The reliance placed by Mr. Naik on a recent order passed by the Supreme Court in the case of *X vs. State of Rajasthan and anr.*¹ appears well founded. In the said case, the Supreme Court observed as under:

“14. Ordinarily in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused.

15. Over a period of time, we have noticed two things, i.e., (i) either bail is granted after the charge is framed and just before the victim is to be examined by the prosecution before the trial court, or (ii) bail is granted once the recording of the oral evidence of the victim is complete by looking into some discrepancies here or there in the deposition and thereby testing the credibility of the victim.

16. We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach to its final conclusion which may either result in the conviction of the accused or acquittal of the accused. The moment the High Court exercises its discretion in favour of the accused and orders release of the accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed.”

1 Special Leave Petition (Criminal) No.13378 of 2024.

(emphasis supplied)

13. To conclude, in the backdrop of the nature of the accusation and the gravity of the offences and the punishment the offences entail, I am not inclined to release the applicants on bail, on the ground of delay in trial as it appears to be on account of the causes, which are primarily attributable to the accused.

14. Hence, the following order:

: O R D E R :

- (i) Applications stand rejected.
- (ii) It is clarified that these *prima facie* observations are confined to determine entitlement to bail only.

[N. J. JAMADAR, J.]