

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4201 OF 2024

Navendu Kashmiri Babbar ... Applicant
Vs.
Central Bureau of Investigation, ACB and another ... Respondents

Advocate Sherali S. Khan with Mr. A. Khatri and Mr. Nadeem Shaikh for Applicant.

Mr. Amit Munde, SPP a/w. Ms. Jai Vohra for CBI, ACB, Mumbai for Respondent No.1.

Mr. Sagar R. Agarkar, APP for Respondent No.2-State.

CORAM : MANISH PITALE, J.
DATE : NOVEMBER 18, 2024

P.C. :

. Heard learned counsel appearing for the applicant and learned SPP appearing for the respondent - Central Bureau of Investigation (CBI).

2. On 14.11.2024, the hearing of this application was adjourned and fixed for today to enable the learned SPP to take appropriate instructions as regards the number of witnesses proposed to be examined by the CBI in the pending trial.

3. In the present case, the applicant was arrested on 17.02.2020 in connection with FIR No.RC BA1/12018/A0016 dated 27.06.2018. The CBI took over the investigation and the applicant along with the other accused persons is facing prosecution for offences under Sections 409, 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 (IPC), as also the provisions of the Prevention of Corruption Act, 1988.

4. This Court is informed that some of the other accused persons have been enlarged on bail. The earlier application for bail filed on

behalf of the applicant was heard and dismissed on merits by this Court by an order dated 21.04.2022 passed in Bail Application No.4367 of 2020. The Special Leave Petition filed before the Supreme Court against the said order was dismissed with liberty to the applicant to approach the trial court for appropriate relief. Thereafter, the applicant moved the Special CBI Court. But, his bail application was again rejected by an order dated 22.08.2024.

5. The learned counsel for the applicant emphasized upon the fact that the applicant has suffered incarceration for more than four years and nine months till date. It is submitted that although 29 witnesses have been examined, the list of witnesses shows a total of 73 witnesses to be examined by CBI. The trial would take a long period of time for completion and in that light, this Court may consider allowing the present application. It is submitted that the applicant undertakes to abide by conditions that may be imposed by this Court.

6. On the other hand, the learned SPP appearing for the CBI submits that although 44 witnesses technically remain to be examined, the CBI may not examine all the 44 witnesses and only 30 to 35 witnesses may be examined. It is submitted that if this Court directs the trial to be expedited before the Special CBI Court, it could be completed within a year from today. It is also submitted that the applicant is the master mind in the present scam, which is to the tune of Rs.9.28 crores. It is further submitted that there is possibility of the applicant influencing witnesses.

7. Considering the fact that the earlier bail application of the applicant was dismissed on merits and the Supreme Court also did not interfere with the order of this Court, there is no point in discussing the merits of the matter for considering the prayer for bail. The contentions raised on behalf of the applicant have been considered only from the angle of the period of incarceration already undergone and the present

status of the trial proceedings before the Special CBI Court.

8. The charge, in the present case, was framed on 06.03.2023 and till date, 29 witnesses have been examined. Although the list of witnesses shows 73 witnesses to be examined by the CBI, in practical terms, fewer witnesses would be examined i.e. about 30 to 35 witnesses.

9. But, considering the pressure of work, even before the Special Courts in the City of Mumbai and the applications for extension of time regularly moved for completing trial in time bound cases, this Court is of the opinion that rejecting the bail application and directing the trial to be expedited within a specific period of time may not be a direction appropriate in the facts and circumstances of the present case.

10. The proceedings before the Special CBI Court would take considerable period of time, considering the number of witnesses yet to be examined. The applicant has already undergone incarceration for almost five years i.e. four years and nine months. The apprehension of the CBI that the applicant may not be available for trial can be addressed by imposing stringent conditions on the applicant.

11. The Supreme Court in the cases of *Union of India Vs. K. A. Najeeb*, (2021) 3 SCC 713 and *Javed Gulam Nabi Shaikh Vs. State of Maharashtra*, 2024 SCC OnLine SC 1693 has held that Constitutional Courts can exercise power to enlarge accused under-trials on bail when they have suffered considerable period of incarceration and there is slim possibility of the trial being completed within a reasonable period of time.

12. The facts and circumstances of the present case warrant exercise of such power in favour of the applicant, *al beit*, upon imposing stringent conditions to ensure that the trial is not derailed and that the

applicant is available before the Special CBI Court.

13. In view of the above and without making any comments on the merits of the matter, this Court is inclined to allow the application. Accordingly, the application is allowed in the following terms:-

- (A) The applicant shall be released on bail in connection with in connection with FIR No.RC BA1/12018/A0016 dated 27.06.2018 registered with CBI, ACB, Mumbai, on furnishing P.R. Bond of Rs.50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court;
- (B) The applicant shall appear before the trial Court, except when exempted for the reasons to be recorded in writing. He shall cooperate with the trial Court for expeditious disposal of the trial;
- (C) The applicant shall report to the office of the CBI, ACB, Mumbai on the first and third Monday of every month, during the pendency of the trial;
- (D) The applicant shall not leave the jurisdiction of the Special CBI Court where the trial is pending, during the pendency of the trial;
- (E) The applicant shall not tamper with the evidence of the prosecution. He shall not influence the informant, witnesses or any other person concerned with the case;
- (F) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of his active mobile number and residential address to the trial Court and update about the same, if there is any change;
- (G) The applicant shall surrender his passport, if any, with the

trial Court.

14. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

15. The bail application stands disposed of accordingly.

(MANISH PITALE, J.)

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