



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPLN) NO. 40 OF 2024

State of Maharashtra Vs Ramesh Nagnath Kadam

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Mahesh Mule, Special Public Prosecutor with Mr. N.B. Jawade, APP for applicant/State.
Mr. Harish Damodhar Dangre, counsel with Mr. Swapnil S. Shingane, counsel for
non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 04/12/2024.

1. By this application, the State has seeking cancellation of bail of the non-applicant in connection with crime 160/2015 in ACB Special Case No. 08/2017 registered with Police Station Bhandara for the offences punishable under Sections 409, 418, 420, 120(B), 467, 468, 471 R/w 34 of the Indian Penal Code, 1860; and Sections 13(1)(c), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988.

2. The application is filed on the ground that while granting bail on the ground of delay in trial, the Special Court has not considered that by filing various applications, it was the non-applicant who has obtained the stay, and therefore, the trial could not proceed timely, and therefore, there is a delay in trial. The said delay in trial is not on the part of the prosecution. He has also raised the other grounds for cancellation of bail but stressed upon the aspect that the learned Special Court has

granted the bail, considering that there is no timely trial and the applicant is behind bars since long, and in the light of the decision of *Union of India Vs K.A. Najeeb [(2021) 3 SCC 713]* and by considering the other aspects and involvement of the present applicant, though in the economic offence, but as the right of the speedy trial is affected, the non-applicant is released on bail.

3. By bunch of writ petitions, the provision under Section 13(1)(d) of the Prevention of Corruption Act, 1988 was under challenge, and by considering the submissions of both the sides, this Court at the principal seat directed that the trial should not proceed till the further orders. He submitted that in view of the stay granted by this court at the principal seat, the trial could not proceed, and it is not on the part of the prosecution that the trial was delayed. He submitted that considering the same, the observation of the Special Court granting bail is incorrect. The Special Court has not considered the merit of the matter, and considerations for the grant of bail are also not considered by the Special Court. In view of that, the bail granted to the present non-applicant deserves to be cancelled.

4. Learned counsel for the non-applicant submitted that prior to granting of the stay by the principle bench, there are other considerations also, and due to which the trial was delayed. He invited my attention towards the application on behalf of the present non-applicant, wherein in para-13 to 19 in detail the

progress of the trial was mentioned by the non-applicant, and in para-19, it is specifically mentioned that the fact remains that even before keeping this trial pending in view of interim orders/directions passed by the Principal Bench in Criminal Writ Petition No. 457/2020 and other connected matters, the proceeding in this matter would show that from March, 2017 to December, 2017, for about 20 dates, the trial could not proceed for want of submitting 'Muddemal' by the prosecution. Thereafter, from December 2017 till September 2019, for about 45 dates, the charge was not framed. The charge was framed only on 18/09/2019 after stringent directions were issued by this Court by its order dated 08/08/2019.

5. Thus, he submitted that this para itself is sufficient to show that trial is not delayed merely because there was a stay, but prior to granting of the stay by the principal bench, the trial was pending for want of submitting Muddemal approximately from March 2017 to December 2017, i.e. six to seven months. After depositing the Muddemal also, the charge was not framed. Approximately, for two years, and in the year 1999, the charge was framed. He further submitted that the trial is at the fag end and now fixed for the final submissions or the argument. Considering the same, the application of state deserves to be rejected.

6. He also invited my attention towards various orders passed of this bench also. Moreover, he submitted that in another crime number, which was registered at

Dahisar Police Station, registered under Sections 406, 408, 409, 420, 465, 467, 468, 471, 384, 120-B, and 34 of the Indian Penal Code, 1860. By applying the similar law, i.e. delay in trial, and by applying the judgment of the Hon'ble Apex Court in the case of ***Union of India Vs K.A. Najeeb*** referred (supra), the bail is granted at the principal seat in the crime registered at Dahisar Police Mumbai. Thus, he submitted that considering all these aspects, the application is devoid of merits and liable to be rejected.

7. After hearing both sides and on perusal of the record which is submitted, there is no dispute as to the fact that a stay was granted at the principal seat as the issue involved was about the validity of Section 13(1)(d) of the Prevention of Correction Act. The order placed on record sufficiently shows that, as the larger issue was involved, the stay was granted. The present applicant is arrested in respect of the present crime i.e. crime number 160/2015, on 27/09/2016 since then he is behind bars.

8. Thus, considering the same, he is behind bars for more than seven and a half years. There are other reasons also for delay in trial. Now the issue regarding delay in trial is considered by the Hon'ble Apex Court in a catena of decisions, including the decision of ***Union of India Vs K.A. Najeeb*** referred (supra), wherein the Apex Court has considered that speedy trial is right of the accused, and if there is no speedy trial, the right of the accused, which is covered under Article 21 of the Constitution of India, is affected.

9. The Hon'ble Apex Court in the case of ***Union of India Vs K.A. Najeeb*** referred (supra) specifically observed that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time. The courts would ordinarily be obligated to enlarge them on bail regardless of statutory restrictions imposed on right to bail by the prosecution, that is, Section 43-D (5) of UAPA. Thus, considering the right of the non-applicant regarding the speedy trial, the special Court has granted him bail.

10. Present application is filed by the State for cancellation of bail along with other grounds, and learned Special Prosecutor harp upon the fact that the delay is not on account of the prosecution but it was because of the stay obtained by the non-applicant. But considering the order passed and the various documents filed on record, they appear to be various reasons for delay in trial, and now trial is at the fag end, and it is fixed for the argument i.e. the final submission and the trial can be disposed within short span of time.

11. As far as the law regarding the cancellation of bail is concerned, it is well settled that consideration for the grant of bail and cancellation of bail are different. As far as cancellation of bail is concerned, the considerations for cancellation of bail are considered, and it is consistently held that it is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court

granting bail ignores relevant material indicating prima-facie involvement of the accused or takes into account the irrelevant material which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail.

12. Moreover, in the case of *Deepak Yadav Vs. State of U.P and another [2023 (2) Mh. L. J. (Cri) (S.C.) 196]*, wherein also it is held that there is certainly no straight jacket formula which exists for courts to assess an application for grant or rejection of bail but the determination of whether the case is fit for the grant of bail involves a balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima-facie case of the involvement of the accused are important.

13. The Hon'ble Apex Court has laid down illustrative circumstances where the bail can be cancelled are as follows:-

- i) Where the Court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.
- ii) Where the Court granting bail overlooks the influential position of the accused in comparison of the victim of abuse or the witnesses especially when there is prima-facie misuse of position and power over the victim.
- iii) Where bail has been granted on untenable grounds.

- iv) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.
- v) Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.
- vi) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

14. In light of the well-settled legal position, if the facts of the present case and the order passed by the Special Court is considered, the bail is granted only on the ground that there is delay in the trial and the applicant is behind bars in the present case by more than seven and a half years, and by considering the aspect of the right of speedy trial.

15. Furthermore, now the trial is already at the fag end and can be disposed of at the earliest. In view of that, I do not find any merit in the application, and the application deserves to be rejected. Accordingly, I proceed to pass the following order.

The criminal application is **rejected and disposed of.**

[URMILA JOSHI-PHALKE, J.]