



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

CRIMINAL APPLICATION (BA) NO.494 OF 2024

Aryan @ Nitesh Munnalal Rathor

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Kanhana, at Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N. S. Pandia, Advocate for applicant.
Ms. Soniya Thakur, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 25/06/2024

1. This is an application for bail in connection with Crime No.150/2017 registered with Police Station Kanhana, District Nagpur for the offences punishable under Sections 394, 397, 307, 216, 201 read with Section 34 of the Indian Penal Code, under Sections 3/25 of Arms Act and under Section 3 of the Maharashtra Control of Organized Crime Act.

2. The applicant came to be arrested on 25.05.2017 and since then he is behind bar.

3. As per the accusation, on 14.05.2017 the complainant Manish Mahakal, who was working in the Jewelry shop of Amit Gupta was present in the shop along with owner Amit Gupta and other employees. At about 2.00 p.m. four persons with masks on their faces, entered the shop by brandishing guns and

firing shots. One of those persons put the gun on the head of Amit and asked others to collect the Jewelry at the gunpoint and then, their two associates started putting the ornaments kept on the display of the shop in their bag. The complainant managed to flee away from the shop and thereafter, he heard the sound of firing, thereafter he came back towards the shop and saw that those four persons were leaving the shop alongwith the ornaments. On the basis of the said report, police have registered the crime against the present applicant.

4. Learned Counsel for the applicant submitted that present bail application is filed mainly on the ground of delay in trial. Since the date of arrest the present applicant is behind bar. There is no progress in the trial. The prosecution intending to examine 80 witnesses, out of which within seven years 14 witnesses are examined. He submitted that as per the directions of this Court learned trial Court was directed to dispose of the trial expeditiously. He submitted that the speedy trial is the right of the accused. In support of his contention he placed reliance on various orders passed by this Court as well as by the Hon'ble Apex Court.

5. He placed reliance on the order passed in **Bail Application No.172/2021 Musa Annu Sayyed Vs. The State of Maharashtra dated 25.11.2022** wherein also the accused was behind

bar for seven years. He further placed reliance on **Akash Satish Chandalia Vs State of Maharashtra in Criminal Bail Application No.1779/2023 dated 26.09.2023**, wherein also on the ground of delay in trial the applicant was released on bail. He further placed reliance on **Eklakh Rahim Shaikh @ Peti Vs. State of Maharashtra in Criminal Bail Application No.3792/2022 dated 27.03.2023**.

6. The application is strongly opposed by the State on the ground that the trial is already in progress, 14 witnesses are already examined. Merely on the ground of delay in trial the applicant is not entitled for any relief in the nature of bail and prays for rejection of the application.

7. The seriousness of the offence and its heinous nature is one of the aspect, which deserve a consideration while exercising the discretion to release an accused on bail, but at the same time, the factor of long incarceration of an accused as under-trial prisoner also deserves to be looked into. Pending a trial, a person cannot be kept in custody for an indefinite period of time and it will clearly violate the fundamental right enshrined in the Constitution and time and again, it has been considered to be a justifiable ground to exercise the discretion to release an accused on bail.

8. There is no doubt that the offence in which the applicants are involved is of a serious nature, however at the same time, the observation of the Hon'ble Apex Court in various decisions are we looked into.

9. In the case of **Ajit Bhagwan Tiwde Vs. The State of Maharashtra in Bail Application No. 995/2021**, the reference of the Supreme Court decision in the case of **Shaheen Welfare Association Vs. Union of India and others (1996) 2 SCC 616**, wherein it is observed by the Hon'ble Apex Court that it was necessary to grant relief to those persons who have been deprived of their personal liberty for a considerable length of time without any prospect of trial being concluded in the near future. Undoubtedly, the safety of the community and of the nation needs to be safeguarded looking to the nature of the offence. But the ultimate justification for such deprivation of liberty pending trial can only be their being found guilty of the offences for which they have been charged.

10. In the case of **Sanjay Chandra Vs. CBI AIR 2012 SC 830**, wherein also the Hon'ble Apex Court observed that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of

liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

11. In the case of **Thana Singh Vs. Central Bureau of Narcotics (2013) 2 SCC 596**, wherein it was observed that the accused was languishing in prison for more than 12 years and awaiting his trial for the offences under the provisions of NDPS Act. He was consistently denied bail. The maximum punishment for the offence was 20 years and he remained in detention for the period exceeding one half of the maximum period of imprisonment.

12. In **Vivek Kumar Vs. State of U.P. (2000) 9 SCC 443**, bail was granted to accused by the Apex Court on the ground that it is quite a long period that he is in custody.

13. Thus, there is a consistent view that the incarceration in the custody for long period of trial or completion of trial affects personal liberty guaranteed under Article 21 of the Constitution of India, in the context of restrictions for granting bail in relation to some offences under special legislation like MCOC Act.

14. As observed by this Court in **Ajit Bhagwan Tiwde** (supra) in paragraph No.31 which reads as under:

"In the light of observations of Supreme Court and this Court as stated above, the Court has to perform balancing act. The sympathy for undertrials who are in custody has to be balanced with gravity/magnitude of crime, likelihood of threat to witnesses. The analysis may be based on facts of each case."

15. Having analysed the law laid down in regard to long incarceration of the under trials in custody, in the context of stringent provisions of the MCOCA for the purpose of grant of bail.

16. Here also the accused/applicant are behind bar from last seven years and more. Out of 80 witnesses prosecution has only examined 14 witnesses. As far as the possibility of the trial commencing and concluding in the near future is not there. Considering all these aspects and in the light of the observations of the Hon'ble Apex Court, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(a) The applicant - **Aryan @ Nitesh Munnalal Rathor**, shall be released on bail in connection with Crime No.150/2017 registered with Police Station Kanhan, District Nagpur for the offences punishable under Sections 394, 397, 307, 216,

201 read with Section 34 of the Indian Penal Code, under Sections 3/25 of Arms Act and under Section 3 of the Maharashtra Control of Organized Crime Act, on executing P.R. Bond in the sum of Rs.50,000/- with one or more sureties of the like amount.

(b) The applicant shall attend concerned Police Station i.e. Police Station Kanhan once in a month and the concerned Police Station Officer shall record his presence.

(c) The applicant shall not leave the jurisdiction of Nagpur District without permission of the Court.

(d) The applicant shall furnish his address and cell phone number along with the names of his two relatives and their permanent addresses.

(e) The applicant shall attend the trial Court regularly on the date of hearing without seeking any exemption unless there are exceptional circumstances.

17. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)