



**THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.597/2024
Mohd.Jawed s/o Abdul Wahab

..VS..

**State of Maharashtra, through Police Station Officer,
Buldhana City, Taluka and District Buldhana**

WITH

CRIMINAL APPLICATION (APPP) NO.1204/2024
Jyotsna d/o Ashok Nare (Intervenor)

..VS..

Mohd.Jawed s/o Abdul Wahab and anr

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

Court's or Judge's Order

.....
Shri S.V.Sirpurkar, Counsel for the Applicant.
Ms.Jyotsna Nagre, Intervenor In-person.
Shri U.R.Phasate, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 22/08/2024
PRONOUNCED ON : 28/08/2024¹.

1. By Criminal Application No.597/2024, being moved under Section 439 of the Code of Criminal Procedure, the applicant seeks regular bail in connection with Crime No.682/2018 registered with the non-applicant/police station for offences punishable under Sections 170, 171, 420, 467, 468, and 471 read with 34 of the Indian Penal Code.

2. The applicant came to be arrested on 18.7.2018 and since then he is in jail.

3. Earlier, the applicant had filed an application bearing Criminal Bail Application No.665/2023 which was disposed of as withdrawn with liberty to the applicant to approach this court if trial is not disposed of in two months.

4. The crime is registered on the basis of report lodged by police official Shri D.B.More as he received a complaint of one Suman Shaligram Rajput alleging that the applicant in collaboration with other co-accused persons purchased an agricultural property belonging to her by preparing forged documents and stamps with an intent to cheat her. On the basis of the said complaint, the police registered the crime against the applicant and other co-accused persons.

5. After completing investigation into the crime in question, chargesheet against the applicant and other co-accused persons was filed. During pendency of the case, accused No.4 applied for tender of pardon and she was accepted as approver. Learned Judge of the trial court recorded entire evidence led by the prosecution and statements of accused persons were recorded. After going through the entire evidence led by the prosecution and accused persons, learned Magistrate came to a conclusion

that an offence is made out under Section 469 of the Indian Penal Code which is punishable with life imprisonment and minimum punishment provided is for a term of ten years. It is further observed by learned Magistrate that in view of Section 323 of the Code of Criminal Procedure, he is empowered only to impose punishment for a term of seven years and, therefore, committed the case to the court of sessions by forming an opinion over punishment.

6. Heard learned counsel Shri S.V.Sirpurkar for the applicant, learned counsel Ms.Jyotsna Nagre for Intervenor, and learned Additional Public Prosecutor Shri U.R.Phasate for the State.

7. Learned counsel for the applicant submitted that from the date of arrest, the applicant is behind the bars. Punishment provided for offences under Sections 420, 468, and 471 of the Indian Penal Code is upto seven years. The applicant has undergone maximum punishment as an under-trial prisoner. Now, learned Magistrate committed the case to the Court of Sessions which would require time for disposal and the applicant cannot be kept behind the bars for an indefinite period of time. As such, learned counsel

prays that the application be allowed and the applicant be released on bail.

8. In support of his contentions, learned counsel for the applicant placed reliance on following decisions:

1. Jalaluddin Khan vs. Union of India, reported in 2024 SCC OnLine SC 1945, and

2. Criminal Appeal arising out of SLP (Criminal) No.8781/2024 (Manish Sisodia vs. Directorate of Enforcement) decided by the Honourable Apex Court on 9.8.2024.

9. *Per contra*, learned Additional Public Prosecutor for the State vehemently opposed the application and submitted that similar nature of offences so also series of offences are registered against the applicant in different crime numbers. If he is released on bail, the entire trial would be held up. Moreover, the trial is at fag end. Learned Magistrate considered scope under Section 323 of the Code of Criminal Procedure and powers under the said Section can be evoked at any stage of proceeding. Thus, it is settled provisions of law that the said powers may be evoked even after deposition or examination-in-chief of witnesses. The key requirement for evocation of powers under Section 323 of the Code is that learned Magistrate concerned must feel

that a case is one which ought to be tried by the Court of Sessions.

10. Accused No.4, who is approver, also filed an application for intervention and objected the application on ground that various criminal cases of similar nature are pending against the applicant. If the applicant is released on bail, there is possibility that he would tamper with prosecution evidence. The trial is at fag end and the Sessions Court only has to consider material before it, hear parties on evidence, and impose punishment or decide the matter. Thus, considering involvement of the applicant in more severe offences, learned Magistrate committed the case to the Court of Session. As such, it is prayed that the application be rejected.

11. Before entering into merits of the application, issue involved in the present application is, whether the application of the Intervenor can be entertained when she is neither victim nor informant as far as registration of crime is concerned. On the contrary, she was one of co-accused to whom tender of pardon was granted.

12. Admittedly, Public Prosecutor occupies position to deal with application for grant of bail in our criminal justice system. The crimes are treated as wrong against society as a whole and his role in administration of justice is special as he is not just representative of aggrieved person but he is representative of the State at large. Though he is appointed by the Government, he is not a servant of the Government or investigating agency. He is an officer of the Court and his primary duty is to assist the Court in arriving at the truth by putting-forth all relevant material on behalf of the prosecution.

13. The use of term “assist” in proviso to Section 24(8) is crucial and implies that the victim’s counsel is only intended to have a secondary role to assist the Public Prosecutor. This is supported by the fact in view of Section 301 of the Code of Criminal Procedure, which reads as under:-

301. Appearance by Public Prosecutors: (1)
The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

14. Thus, in view of Section 301(2) of the Code, the private person if instructs a pleader to prosecute any person, he can assist the prosecutor by engaging a counsel, of course, with the permission of the Court. Thus, scope of Section 301(2) of the Code is specified by Sub-Section (2) of the said Section. Of course, it is at the discretion of the Court whether the said person is to be allowed or not to allow. Admittedly, the definition of a private person is not defined anywhere in the Act and, therefore, locus of the person requires to be seen.

15. "*Locus Standi*" signifies a right of appearance in a Court of justice or right to be heard or place of standing. Such a Locus Standi confers on a person only if he has an interest in the matter. The Victim/Private person in that sense does have an interest in the matter since it is he/she

are the ultimate sufferer of such crime. However, under Section 301(2) of the Code, the legislature has consciously regulated it in the manner that the pleader so instructed by a private person, shall act in any such case under the directions of the Public Prosecutor only and not as an absolute legal right of independent appearance before the Court. The aforesaid provision is therefore, in a clear distinction from the specific provision under Section 372 of the Code conferring upon the victim a distinct legal right to prefer an appeal which was not earlier available to him/her. The conscious distinction made by the legislature in the wording of the two provisions is apparent and with a definite legislative intent and purpose.

If by taking a view that victim/private party or informant has legal right to appear in a proceeding initiated at the instance of the accused under the provision of Section 301(2) of the Code, it would mean that the victim/private party is a necessary party in every such proceeding and as a matter of right is entitled to receive notice which is never the intention of legislature to confer specific legal right. Such interpretation is not appropriate while interpreting the

specific language used in the statute keeping into mind aim and object.

16. In the case of **J.K. International vs. State (Govt. of NCT of Delhi) and others, reported in (2001) 3 SCC 462**, the matter related to the petition for quashing filed by the accused before the High Court where the prayer for impleadment as a party was declined. The Hon'ble Apex Court held that under the scheme envisaged in the Code of Criminal Procedure, a person who is aggrieved by the offence committed is not altogether wiped out from the scenario of the trial merely because the investigation was taken over by the police and the charge-sheet was laid by them. Considering this provision of Section 301(2) of the Code, it was held that even in the Sessions Court where public prosecutor is only authority empowered to conduct the prosecution, as per Section 225 of the Cr.P.C., a private person who is aggrieved by the offence involved in the case is not altogether debarred from participating in the trial.

The Honourable Apex Court further held that under Section 301(2) of the Code under Chapter-XXIV "General Provision to inquiry and trial" a limited role is permitted to be played by a private person if he is aggrieved

and his presence is not wiped out from the proceeding in the criminal trial merely because the case was chargesheeted by the Police. The Honourable Apex Court also referred the judgment in the case of **Bhagwant Singh vs. Commissioner of Police, reported in (1985)2 SCC 537.**

17. Upon considering the law laid down by the Honourable Apex Court in various decisions, the role and rights of the victims are recognised. On the basis of various decisions, it can be said that the victim or a private person has the locus to appear in a proceeding initiated at the instance of the accused, in any case before any Court where it is an affected party, however, subject to the discretion conferred upon the Court, to be exercised in the manner as may be required in the facts and circumstances of a particular case. 'Locus Standi' as defined in the Blacks Law Dictionary as 'the right to bring an action or to be heard in a given Forum'.

18. As per the Law Lexicon by Ramnatha Aiyer, 'Locus Standi' signifies a right of appearance in a Court of justice or right to be heard or place of standing. Such a *locus standi* confers on a person only if he has an interest in the matter. The victim/private person in that sense does have an

interest in the matter, since he/she are the ultimate sufferer of such crime.

19. In the light of above observation by the Honourable Apex Court and in the light of legal provisions, in the present application, it nowhere appears to my mind that the applicant or Intervenor is direct sufferer due to action or inaction on the part of the applicant who is the accused of the crime. As the Intervenor has no *Locus Standi*, which is apparent from the application, the application is devoid of merits and deserves to be rejected.

20. Coming to facts of the present case, it reveals that the applicant along with other co-accused persons is facing trial for offences under Sections 170, 171, 420, 467, 468, and 471 read with 34 of the Indian Penal Code. There is a specific charge against the applicant under Section 170 and 171 of the Indian Penal Code. Learned Magistrate recorded the entire evidence led by the prosecution and statements of accused were recorded. After considering the evidence of the prosecution and cross examination by the accused persons, learned Magistrate formed an opinion that more severe offences are committed by the applicant and the said offences are punishable under Section 467 of the

Indian Penal Code which is punishable with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Being court of the Chief Judicial Magistrate, is not empowered to impose higher punishment i.e. more than seven years, in view of provisions under Sections 323 and 325 of the Code, he committed the case to the Court of Session on the quantum of punishment. It is observed by learned Magistrate that Section 323 of the Code is general in nature. Whereas, Section 325 of the Code provides for specific category of cases. Sub-section (1) of Section 325 itself gives an indication that the relevant factor for consideration is, whether the punishment which ought to be received by the accused in the case before him should be more severe than the punishment which he is competent to inflict. Referring the decision in the case of **Narendra Amratlal Dalai vs. The State Of Gujarat, reported in (1978) GLR 165**, the Gujarat High Court in the case of **Shailesh vs. State, Special Criminal Application No.1228/2007 decided on 8.10.2008** committed the case to the Court of Sessions. The Gujarat High Court, in paragraph No.7 of the decision in the case of **Shailesh** *supra* observed that, “supposed, before a Chief Judicial

Magistrate or Metropolitan Magistrate, the case involves an offence of a gross nature and the sentence which he ought to award must exceed seven years, what is the Chief Judicial Magistrate or the Metropolitan Magistrate to do? Sub section (3) of Section 325 in such a case enables the Chief Judicial Magistrate to pass such order in the case as he thinks fit and is according to law and commit the case under Section 325(1) to the Court of Sessions under Section 323 of the Code of Criminal Procedure. The word Magistrate, occurring in Section 323 in this connection should be held to include a Chief Judicial Magistrate, or a Metropolitan Magistrate as well. It must be made clear, however, that this interpretation does not affect the power of a Magistrate or a Metropolitan Magistrate to commit under Section 323 of the Code of Criminal Procedure to the Court of Sessions wherein a question other than the quantum of punishment which ought to be received by the accused is involved."

21. By considering above provisions, as the offence against the accused is made out under Section 467 of the Indian Penal Code for which maximum punishment of life imprisonment is provided, learned Magistrate committed the

case to the Court of Sessions to hear on the quantum of punishment.

22. Thus, by following procedure, learned Magistrate committed the case to the Court of Sessions.

23. As regards submissions of learned counsel for the applicant that the applicant is behind the bars since the date of his arrest and the trial is not concluded, in decisions **Jalaluddin Khan vs. Union of India** and **Manish Sisodia vs. Directorate of Enforcement**, relied by him, the Honourable Apex Court considered aspect of delay in trial and released applicants therein on bail.

24. There is no dispute as far as legal provisions are concerned that right to life and personal liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21, and 22 of the Constitution of India. Any attempt to encroach upon the fundamental right has been frowned upon by the Honourable Apex Court in catena of decisions. In the said decisions, the Honourable Apex Court referred observations of its earlier decision in the case of **Roy V.D. vs. State of Kerala, reported in 2022 SCC OnLine** and observed that the life and liberty of an individual is so

sacrosanct that it cannot be allowed to be interfered with except under the authority of law. It is a principle which has been recognised and applied in all civilized countries. In our Constitution, Article 21 guarantees protection of life and personal liberty not only to citizens of India but also to aliens.

25. Thus, the Honourable Apex Court considered that on account of a long period of incarceration and the trial even not being commenced, the appellant has been deprived of his right to speedy trial and released him on bail. There is no dispute that bail is a rule and jail is an exception and the applicant cannot be kept behind the bars by way of punishment. At the same time, gravity of offences need to be looked into.

26. Insofar as the applicant is concerned, in all 34 offences are registered against him and out of that 4 offences are similar in nature. As far as the case before the court below is concerned, it is at the fag end. The applicant had also challenged the order passed by learned Magistrate by preferring an application bearing Criminal Application (APL) No.911/2024 before this court and co-ordinate bench of this court stayed order impugned dated 30.4.2024 and,

therefore, the trial has not proceeded further. Thus, considering the same, only aspect of imposing punishment by hearing parties remained with the Sessions Court. Considering series of offences registered against the applicant of the similar nature and the trial is already concluded, the applicant has not made out a case for grant of bail.

27. In the light of the above, the application for bail deserves to be rejected and the same is **rejected**.

Application for bail stands **disposed of**.

Application for intervention is **rejected and disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!