



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

CRIMINAL APPLICATION (BA) NO.825 OF 2024

Shivaji s/o Rangnath Doifode Vs. State of Maharashtra

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

Court's or Judge's orders.

*Mr. Anil Mardikar, Sr. Advocate a/b Shri D.P. Singh, Advocate
for applicant.*

Ms M.R. Kavimandan, APP for non-applicant/State.

Mr. S. Khan, Advocate for informant (Assist to prosecution).

CORAM : M.W. CHANDWANI, J.

DATE : 24.10.2024.

1. The applicant is seeking bail in connection with Crime No.453/2022 registered with Police Station, Deulgaon Raja, District Buldhana for the offences punishable under Sections 302, 307, 324, 504, 506 read with Section 34 of the Indian Penal Code (for short, IPC).

2. Heard Mr. Anil Mardikar, learned Senior Counsel for the applicant as well as learned APP assisted by learned counsel for the informant. I have perused the charge-sheet.

3. Mr. Anil Mardikar, learned Senior Counsel for appellant, submitted that the applicant has been arrested in this crime on 06.12.2022 and since then he is in jail. The charge-sheet came to be filed in the month of March 2023 and since then almost 19 months have expired but there is no progress in the trial. Even the charge has not been framed till date. Prosecution has projected 38 witnesses in

the charge-sheet, therefore, there is no likelihood that the trial will conclude within reasonable time as on date even the counter case registered against the informant for the offence punishable under Section 324 of the IPC has not been tagged with the sessions trial in which the accused are taken into custody.

4. Learned Senior Counsel vehemently submitted that the statements of witnesses; Rekha Nikalaje and Bhagwan Jaibhaye will go to show that the incident did not occur as mentioned in the FIR. Reading of their statements, coupled with seizure of the Bolero vehicle with broken glasses which was damaged due to pelting of stones by the complainant party on the applicant indicates that the possibility of an incident cannot be ruled out. According to him, the doctor has opined that injuries on the person of deceased Tejram Govind Doifode are not caused by the iron rod which was seized in the crime. There is an injury on the head of accused no.1, the father of applicant. The father is also suffering from heart ailments. Lastly, Mr. Mardikar, learned Senior Counsel for the applicant, vehemently submitted that the trial is pending since March 2023 and it has not progressed, even the charge has not been framed against the applicant. Considerable delay has been caused in commencement of the trial and therefore, the applicant is deprived of his right of speedy trial and this aspect has not been given weightage by the Sessions Court while

considering the bail application.

5. To buttress his submission, he seeks to rely upon the decision of Supreme Court in the case of ***Manish Sisodia Vs. Directorate of Enforcement***¹ wherein the Supreme Court, while dealing with the bail application of an ex-minister, who was facing charges under the provisions of the Prevention of Corruption Act, IPC as well as under the provisions of Prevention of Money Laundering Act, 2002, has observed that right of speedy trial and right to liberty are sacrosanct rights. On denial of these rights, the Trial Court and High Court ought to have given due weightage to these factors. Reliance is also placed on the case of ***Union of India Vs. K. A. Najeed***², wherein in para no. 15, the Supreme Court has held as under:-

“15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners v. Union of India) (1994) 5 SCC 731, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.”

1 2024 SCC Online SC 1920

2 (2021) 3 SCC 713

6. As against this, Ms Kavimandan, learned APP assisted by Mr. Khan learned counsel for the informant submitted that there is sufficient material against the applicant which connect him with the crime. The FIR as well as statements made by the witnesses go to show that the applicant drove the vehicle on the person of deceased by challenging them. Injuries, dislocation of left side shoulder, fracture of lobes of both the sides mentioned in column no.15 of the postmortem report also corroborate the statement of the complainant as well as witnesses. Thus, there is a *prima facie* case against the applicant. The applicant is the person who was driving the vehicle.

7. Learned APP vehemently submitted that there is no delay in trial. According to her, the charge framed was challenged by the applicant before this Court and this Court directed to hear the applicant before framing of the charge. Thereafter, other accused persons have applied for discharge which is to be decided by the Sessions Court. Other accused persons purposefully remain absent, therefore, delay cannot be attributed to the prosecution. According to her, if there is a *prima facie* case against the applicant, it entails for rejection of bail. Further, life risk, threatening of witnesses and tampering with the evidence cannot be ruled out. To distinguish the case of ***K. A. Najeel*** (supra) relied upon by the applicant, she seeks to rely upon the decision of **Gurwinder**

Singh Vs State of Punjab ³.

8. It is to mention here that the present applicant had also applied for grant of bail before this Court. When this Court vide order dated 29.08.2023 showed its disinclination to grant bail, the application came to be withdrawn and accordingly, the application came to be disposed of as withdrawn.

9. Perusal of the charge-sheet shows that the incident took place because of a quarrel between the family of the complainant and the accused. On the date of the incident, when the applicant and the co-accused spotted the tipper of the applicant, they stopped the driver. Thereafter, the applicant alongwith the co-accused reached on the spot. They indulged in assaulting the informant and the deceased but due to intervention of the villagers, the quarrel was pacified. The material on record goes to show that the applicant again came near the house of informant in his Bolero vehicle alongwith the other co-accused. After further altercation and exchange of words, the applicant drove the vehicle on the person of the deceased whereby, he suffered grievous injuries and scummed to those injuries. There are statements of the complainant and other witnesses on record, who are eye witnesses of the incident. Therefore, there is a *prima facie* case against the applicant.

10. So far as the ground for delay in the trial and incarceration of the applicant is concerned, no doubt, charge-sheet has been filed in the month of March 2023 and it is a matter of record that the charge has been framed on 09.10.2023, however, the applicant challenged the same on the ground that he was not heard prior to framing of charge. By order dated 10.01.2024, this Court set aside the order of framing of charge and directed the Sessions Court to hear the applicant before framing the charge. Thereafter, on 22.02.2024, the matter was listed for framing of charge however, on some of the dates the accused was not produced before the Sessions Court. Thereafter, accused nos.2 and 3 on some occasions, were not present. Subsequently, the other co-accused filed an application for discharge and application for relaxation of condition of bail order. As of now, the application for discharge of accused nos.2 and 3 is pending before this Court. For these reasons, the charge could not be framed in this matter. It appears that within five months from the date of setting aside the order of framing of charge, the applicant filed an application for bail before the Sessions Court, which came to be rejected by the impugned order 23.07.2024.

11. It is true that under-trials cannot be indefinitely detained pending the trial and the accused has a right of speedy trial. If the accused had suffered incarceration for a significant period of time then the Court would ordinarily be

obliged to enlarge him on bail as held by the Supreme Court in the cases relied upon by the learned Senior Advocate appearing on behalf of the applicant. However, only five months after the order of framing of charge was set aside, the applicant applied for bail before the Trial Court in the month of July and now before this Court in the month of August. The question remains as to what is the significant period for which the delay in trial would entitle the accused to be released on bail. Certainly, it will depend upon the facts of each case depending upon the nature of allegations for which the accused is charged and the severity of punishment. Reference can be made to the case of *Dilawar Vs. State of Haryana* ⁴, wherein the Supreme Court, in para no. 7 of the decision, has observed as under:-

“7. It is not necessary to refer to all the decisions of this Court articulating the mandate of the Constitution that there is implicit right under Article 21 for speedy trial which in turn encompasses speedy investigation, inquiry, appeal, revision and retrial. To determine whether undue delay has occurred, one must have regard to nature of offence, number of accused and witnesses, workload of the court and the investigating agency, systemic delays. Inordinate delay may be taken as presumptive proof of prejudice particularly when accused is in custody so that prosecution does not become persecution. Court has to balance and weigh several relevant factors. Though it is neither advisable nor feasible to prescribe any mandatory outer time limit and the court may only examine effect of delay in every individual case on the anvil of Article 21 of the Constitution, there is certainly a need for in-house mechanism to ensure that there is no undue delay in completing investigation. This obligation flows from the law laid down by this Court inter-alia in Maneka Gandhi versus Union of India (1978) 1 SCC 248, Hussainara Khatoon (I) versus State of Bihar (1980) 1 SCC 81, Abdul Rehman

4 (2018) 16 SCC 521

Antulay versus R.S. Nayak (1992) 1 SCC 225 and P. Ramachandra Rao versus State of Karnataka (2002) 4 SCC 578.”

So far as the case of **K. A. Najeeb** (supra) is concerned, the Supreme Court in the case of **Gurwinder Singh** (supra) has distinguished it by observing as under:-

“44. The Appellant’s counsel has relied upon the case of KA Najeeb (supra) to back its contention that the appellant has been in jail for last five years which is contrary to law laid down in the said case. While this argument may appear compelling at first glance, it lacks depth and substance.

45. In KA Najeeb’s case this court was confronted with a circumstance wherein except the respondent-accused, other co-accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this court’s decision to consider bail was grounded in the anticipation of the impending sentence that the respondent-accused might face upon conviction and since the respondent-accused had already served portion of the maximum imprisonment i.e., more than five years, this court took it as a factor influencing its assessment to grant bail. Further, in KA Najeeb’s case the trial of the respondent-accused was severed from the other co-accused owing to his absconding and he was traced back in 2015 and was being separately tried thereafter and the NIA had filed a long list of witnesses that were left to be examined with reference to the said accused therefore this court was of the view of unlikelihood of completion of trial in near future. However, in the present case the trial is already under way and 22 witnesses including the protected witnesses have been examined.

46. As already discussed, the material available on record indicates the involvement of the appellant in furtherance of terrorist activities backed by members of banned terrorist organization involving exchange of large quantum of money through different channels which needs to be deciphered and therefore in such a scenario if the appellant is released on bail there is every likelihood that he will influence the key witnesses of the case which might hamper the process of justice. Therefore, mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail. Hence, the aforesaid argument on the

behalf the appellant cannot be accepted.”

12. In the case of ***Manish Sisodia*** (supra), the accused was facing charges under the provisions of the Prevention of Corruption Act, 1988 and Prevention of Money Laundering Act, in that scenario 17 months of incarceration was treated as a significant period of custody at the pre-trial stage.

13. Thus, it is evident that mere delay in the trial pertaining to grave offences, by itself cannot be a ground to enlarge an accused on bail, de hors the facts. In the present case, the applicant who is facing serious charges of committing murder cannot claim 1½ year period as a significant period to claim bail on account of delay in trial that too for the reasons mentioned in forgoing paras. Of course, this will not be the authority for the prosecution to claim that trial may not begin for 1½ years. Obviously, endeavor should be made for timely trial as far as possible but just because the trial could not commence for one or the other reason for 1½ year, it does not mean that the accused who is facing charges of a serious offence like murder, should be released on bail solely on the ground that there is a little delay in commencement of the trial. The cases of ***K. A. Najeeb*** (supra) and ***Manish Sisodia*** (supra) will not be applicable. Thus, the application fails on all counts.

14. Accordingly, the application is rejected with liberty to the applicant to move afresh application for bail if the trial does not commence within one year.

JUDGE

Wagh/Jaiswal