



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

CRIMINAL APPLICATION (BA) NO.971 OF 2024

Devendra s/o Govind Goyal and anr

..VS..

State of Mah., thr.its PSO, PS Tehsil, Nagpur

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

Court's or Judge's Order

**Shri Subodh Dharmadhikari, Senior Counsel assisted by Shri Gaurav Gour, Advocate for Applicants.
Shri H.D.Dubey, Additional Public Prosecutor for the NA /State.
Shri R.S.Kalangiware, Counsel for the Complainant.**

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 12/12/2024

PRONOUNCED ON : 17/12/2024

1. By this application under Section 483 of the Bhartiya Nagrik Suraksha Sanhita, 2023, applicants seek regular bail in connection with Crime No.126/2021 registered with the non-applicant/police station for offences punishable under Sections 406, 409, 420, 467, 468, and 471 read with 34 of the Indian Penal Code.

2. Applicants came to be arrested on 21.7.2021 and 5.2.2021 respectively and since then they are in jail.

3. Heard learned Senior Counsel Shri Subodh Dharmadhikari for the applicants, learned Additional Public

Prosecutor Shri H.D.Dubey for the State, and learned counsel Shri R.S.Kalangiware for the complainant.

4. The crime is registered against applicants on the basis of report lodged by Ashish Jinendra Jain (the informant) on an allegation that applicants duped him to the tune of Rs.1.13 crores. As per the recital of the FIR, he is the businessman and acquainted with both the applicants. As per allegations, both the applicants have informed him that they are running business in the name of "Shree Travels Link" and "Shree Holidays" and they provide services which include "International Travelling Bookings" and "Foreign Currency Exchange" etc. They have represented the informant that they possess licence to carry on the business. The applicants have lured the informant to invest in their business by assuring handsome returns and also shown remittance licence issued by the RBI in order to gain confidence of the informant for investment. In the year 2016, the informant invested amount Rs.1.19 crores which was repaid in the year 2016 itself. It was informed to the informant that the profit would be calculated and would be paid later on and, therefore, investment was quantified in the years 2017 and 2018 and finally the informant as well as

Corrections at page Nos.2, 3, 4, 6, 11 are carried out as per the court's order dt.24.1.25

other investors was duped to the tune of Rs.5.92 crores. The other crimes were also registered against the applicants vide Crime Nos.648/2021 and 30/2021. During the investigation of the said crime, it revealed that remittance licence is also a forged licence. On the basis of the said report, the crime was registered against the applicants. Initially, bail application of applicant No.2 was rejected by this court by order dated 28.4.2023 in Criminal Application (BA) No.1432/2022 and the said order was maintained by the Hon'ble Apex Court also. Another bail application of applicant No.2 vide No.657/2022 was also rejected. The criminal writ petition filed by both the applicants is also dismissed.

5. Now, this application is filed by the applicants on ground that since the date of arrest, they are behind the bars and trial is not concluded.

6. Learned Senior Counsel for the applicants submitted that the right of the speedy trial of the present applicants is affected as they are languishing in jail since the date of arrest and the trial is not concluded. He submitted that now in catena of decisions, the Hon'ble Apex Court has considered the right of the speedy trial of accused enshrined under Article 21 of the Constitution of India and held that a

Constitutional Court cannot restrain from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused under trial under Article 21 of the Constitution has been infringed. In support of his contentions, he placed reliance on numerous decisions.

7. *Per contra*, learned Additional Public Prosecutor for the State and learned counsel for the complainant strongly opposed the application and submitted that the applicants are proprietors of “Shree Travels Link” and “Shree Holidays”. On the pretext of investment, they have obtained the investment from various investors and duped them to the tune of Rs.5.92 crores. As far as the material collected during the investigation is concerned, various statements of the investors, bank accounts statements of the applicants substantially establish a case against the applicants. Not only this but also the applicants have obtained the investment by showing the remittance licence which also reveals to be a forged licence and, therefore, Crime No.126/2021 was registered against the applicants. While rejecting the earlier application of applicant No.2, it is held by this court that there is a *prima facie* material to show

involvement in economic offence. The initial order passed by this court in Criminal Application No.657/2022 was challenged before the Hon'ble Apex Court in Special Leave to Appeal (Criminal) No.8980/2022 and the Hon'ble Apex Court shown disinclination to entertain the said special leave appeal. Another application was filed bearing Criminal Application No.1432 of 2022 and the same was also rejected observing that there was an attempt of tampering of witnesses. In view of that, the application deserves to be rejected.

8. Learned Additional Public Prosecutor for the State and learned counsel for the complainant further invited my attention and submitted that as far as ground of delay is concerned, the same shows that the delay is not on the part of the prosecution but the delay is on the part of the accused as the accused filed various applications as well as applications for adjournment. Roznama shows that on several occasions, the informant was sent back who was present for recording his evidence. To substantiate the said contentions, they have invited my attention towards Roznamas dated 10.10.2024, 8.11.2024, 27.9.2024, 13.9.2024, and so on.

9. Now, three witnesses including the complainant have been examined and the prosecution intends to examine six-seven witnesses and the trial can be concluded in a short span of time. Considering the earlier observation of this court that there was an attempt to tamper the evidence, the same is required to be looked into and the application deserves to be rejected.

10. As far as the merits of the matter is concerned, it reveals that on the basis of the remittance licence, the investment was obtained from various investors. Two crimes are already registered vide Crime Nos.30/2021 and 648/2019. The huge magnitude of economic offence is involved in the said crime. The nature of the allegations is that by showing the remittance licence and by promising the handsome returns, the amounts are obtained towards investment and investors were duped. During the investigation of Crime No.126/2021, it revealed that the remittance licence is also forged one. Now, applicant No.1 has already filed report with the Ambazari Police Station stating that the remittance licence has been forged by the the informant himself. The applicant No.1 though filed the report against the informant, the statements of the investors

and bank statements collected show *prima facie* case against the applicants.

11. It is pertinent to note that while rejecting the earlier application, this court has observed that the informant was threatened by family members of the applicants. The informant's son was also threatened by some unknown persons. The informant has also received threats by telephonic calls. The statement of one Rahul Mishra substantiates the said contention. The statement of Sandip Mishra further shows that the applicant No.1 threatened the son of the informant. Thus, there were efforts to restrain the witnesses from disclosing the truth regarding the same FIR.

12. Thus, not only *prima facie* material is available against the applicants but also the conduct of the applicants sufficiently shows that they are interfering in the administration of justice.

13. As far as the ground raised by the applicants as to delay in trial is concerned, admittedly, in catena of decisions, on which learned Senior Counsel for the applicants placed reliance, the issue regarding speedy trial was considered and it is held that any prosecuting agency including the court

concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

The decision in the case of **Union of India vs. K.A.Najeeb, reported in (2021) SCC OnLine SC 50** was relied upon in the decision in Criminal Appeal No.2790/2024 (**Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh**) decided by the Hon'ble Apex Court on 18.6.2024 wherein respondent therein was in jail for more than 5 years and charges were framed and 276 witnesses were left to be examined and the Hon'ble Apex emphasized that liberty granted by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and speedy trial. No under trial can be detained indefinitely pending trial. Once it is obvious 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.

The decision in the case of **Union of India vs. K.A.Najeeb** *supra* was distinguished by Two-Judge Bench of the Hon'ble Apex Court in the case of **Gurwinder Singh vs. State of Punjab, reported in (2024)SCC OnLine SC 109** and it is observed that in the case of **Union of India vs. K.A.Najeeb** *supra* this court considered that the appellant has been in jail for last five years which is contrary to law laid down in the case of **K.A.Najeeb**. 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. He was released on bail. It is held that mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as ground to grant bail.

In a subsequent decision, in the cases of Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari *supra* by referring

decisions in cases of K.A.Najeeb and Gurwinder Singh, the Hon'ble Apex Court held in **Gurwinder Singh** *supra*, a Two Judge Bench of this Court distinguished **K.A.Najeeb** *supra* holding that the appellant in **K.A.Najeeb** *supra* was in custody for five years and that the trial of the appellant in that case was severed from the other co-accused whose trial had concluded whereupon they were sentenced to imprisonment of eight years; but in **Gurwinder Singh**, the trial was already underway and that twenty two witnesses including the protected witnesses have been examined. It was in that context, the Two-Judge Bench of this Court in **Gurwinder Singh** *supra* observed that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail. It was further held that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused under trial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever

stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, **K.A.Najeeb's** case *supra* being rendered by a three Judge Bench is binding on a Bench of Two-Judges.

14. Thus, having regard to the above discussion, facts of the present case disclose involvement of the applicants in the alleged crime. Moreover, there was an attempt by the applicants and their family members to tamper the prosecution evidence by threatening the witnesses and there is interference in the administration of justice. Moreover, in the present case, the trial is already underway and now, three witnesses including the complainant have been examined and the prosecution has to examine more six-seven witnesses. As regards fundamental right of the accused to have a speedy trial as enshrined under Article 21 of the constitution, is undisputed. However, considering the trial is already underway and only six-seven witnesses are

remained to be examined and considering there was an attempt to tamper the prosecution witnesses, the application deserves to be rejected. The Hon'ble Apex Court in Special Leave Petition (Criminal) No.13378/2024 (**X vs. State of Rajasthan and anr**) decided on 27.11.24 also this aspect is considered and observed that it is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed.

15. In the light of the above facts and circumstances, this could not have been a good ground to exercise discretion in favour of the accused who are involved in economic offences. In view of that, the application deserves to be rejected. However, considering maximum witnesses are examined and the applicants are behind the bars and as per the statement of learned Additional Public Prosecutor for the State, only six-seven witnesses are remained to be examined, the trial can be concluded if examination of witnesses is expedited and, therefore, learned Judge of the trial court shall make every endeavour to dispose of the trial at the earliest.

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

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!