

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.4569 OF 2024

Vasudev Suryavanshi, Aged 35 years,
Occ.Service, R/o.Sakali, Tal.Yevala,
Dist.Jalgaon (Lodged at Bengaluru
Central Prison.)

Applicant

versus

The State of Maharashtra

Respondent

WITH

INTERIM APPLICATION NO.4891 OF 2024

Dr.Megha Pansare

Intervenor

In the matter between :

Vasudev Suryavanshi

Applicant

versus

The State of Maharashtra

Respondent

Ms.Pushpa Ganediwala with Adv.Siddh Vidya, Adv.Shalaka Karkar,
Ms.Anshu Agrawal, Adv.Divya Maniar i/by Siddh Vidya & Associates
for Applicant.

Mr.Tanuj Kushare i/by Abhay Nevagi & Associates for Intervenor.

Ms.Geeta P.Mulekar and Ms.Veera Shinde, APP, for State.

API Somnath Shendge and HC Lokesh Raskar, present ATS officers
present.

CORAM : ANIL S.KILOR, J.

Date of Closing the Order : 12th December 2024

Date of Pronouncing the Order : 29th January 2024

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1. Heard.

2. By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No.39 of 2015 registered with Rajarampuri Police Station, Kolhapur, for the offences punishable under Sections 120B, 109, 302, 307 r/w 34 of the Indian Penal Code r/w Sections 3(1) r/w Section 25(1B)(A), 5 r/w S.27 of Arms Act.

3. Having gone through the charge sheet and the relevant material collected by the Investigating Officer during investigation it is evident that Applicant who is accused no.6, was arrested on 1st December 2018 and as such he is in jail for more than six years. If we see the progress of the trial, it is evident that there is no satisfactory progress in the trial, which further show that there is no end of trial in sight.

4. The Hon'ble Supreme Court of India in the case of *Sheikh Javed Iqbal @ Ashfaq Ansari @ javed Ansari vs. State of Uttar Pradesh*¹, has observed thus:

“23. This Bench in a recent decision dated 03.07.2024 in Javed Gulam Nabi Shaikh Vs. State of Maharashtra, Criminal Appeal No. 2787 of 2024, has held that howsoever serious a crime may be, an accused has the right to speedy trial under the Constitution of India. That was also a case where fake counterfeit Indian currency notes were seized from the accused-appellant. He was investigated by the National Investigating Agency (NIA) under the National Investigating Agency Act, 2008 and was charged under the UAP Act alongwith Sections 489B and 489C IPC. He was in custody as an undertrial prisoner for more than four

1 (2024) SCC Online SC 1755

years. The trial court had not even framed the charges. It was in that context, this Court observed as under:

9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

23.1. After referring to various other decisions, this Court further observed as follows:

19. If the State or 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.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.

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26. *Angela Harish Sontakke Vs. State of Maharashtra* is a case where the accused-appellant was charged under various provisions of the UAP Act as well as under the IPC. He sought for bail. This Court observed that, undoubtedly, the charges are serious but the seriousness of the charges will have to be balanced with certain other facts like the period of custody suffered and the likely period within which the trial can be expected to be completed. In that case, it was found that the appellant-accused was in custody since April, 2011 i.e. for over five years. The trial was yet to commence. A large number of witnesses were proposed to be examined. It was in that context that the appellant-accused was directed to be released on bail.

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30.1. Thereafter, this Court held as follows:

7.1. We are dealing with a case of the accused whose guilt is yet to be established. So long as he is not held guilty, the presumption of innocence is applicable. He cannot be deprived of all his rights guaranteed under Article 21.....

32. This Court has, time and again, emphasized 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-undertrial 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 (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.”

5. In the present matter there are more than 130 witnesses out of which about 30 witnesses have been examined so far. The Applicant is in jail from last more than six years. In the circumstances considering the number of witnesses remained to be examined, there is unlikelihood that trial will be completed in near future.

6. Further the allegations against the Applicant is that he had stolen a motorcycle from Belgavi and used the same in the commission of the offence. However, it cannot be ignored that the said motorcycle was not seized during the investigation or there is no offence registered relating to theft of the said motorcycle.

7. The Applicant is also an accused in the case of M.M.Kalburgi and Gauri Lankesh (C.R.No.142 of 2015 and C.R.No.221 of 2017). In both the cases he had been released on bail.

8. Thus, no doubt there are antecedents against the Applicant, however, considering the nature of evidence available against the

Applicant and nature of allegation coupled with long period of incarceration of the Applicant, in the present matter, I am of the view that as there is no likelihood that trial will be concluded in the near future, the Applicant will be entitled for grant of bail.

9. In the above referred backdrop though learned counsel for the State and learned counsel for the Intervenor have strongly opposed the application, in view of the above referred observations, I am of the opinion that application needs to be allowed. Hence, I pass following order :

ORDER

- (i) Bail Application is allowed and disposed off;
- (ii) It is directed that the applicant shall be released on bail in Crime No.39 of 2015 registered with Rajarampuri Police Station, Kolhapur, for the offences punishable under Sections 120B, 109, 302, 307 r/w 34 of the Indian Penal Code r/w Sections 3(1) r/w Section 25(1B)(A), 5 r/w S.27 of Arms Act on furnishing P.R.Bond of Rupees Twenty Five Thousand with one solvent surety in the like amount;
- (iii) If the Applicant is not in jail in any other offence, on release of the Applicant in the present crime, he shall attend Rajarampuri Police Station, Kolhapur on every 1st and 16th of each month between 10.00 a.m and 12.00 noon till conclusion of trial, except on the date of trial of this case or any other case;
- (iv) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;
- (v) Liberty is granted to the State for cancellation of bail if the Applicant breaches any condition or misuses the liberty or commits

similar offence;

(vi) The Applicant shall attend the trial before the Trial Court regularly on every date unless exempted by the trial Court for any reason;

(vii) Interim Application No.4891 of 2024 stands disposed off.

(ANIL S.KILOR, J.)

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