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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 863 OF 2024

Bhole Vishwanath Upadhyay .. Applicant

Versus

The State of Maharashtra .. Respondent

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- Mr. Sandeep R. Karnik, Advocate for Applicant appointed through Legal Aid.
- Ms. Megha S. Bajoria, APP for Respondent – State.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 02, 2025.

P.C.:

1. Heard Mr. Karnik, learned Advocate for Applicant and Ms. Bajoria, learned APP for Respondent – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R.No.69 of 2020 registered with Bangur Nagar Police Station, Mumbai for the offence punishable under Sections 302 and 307 of the Indian Penal Code, 1860 (for short '**IPC**') for having committed the murder of his wife by pouring kerosene on her body and setting her on fire. The victim succumbed to her injuries five days after recording her dying declaration in the hospital. She received burn injuries to the extent of between 60% to 80% as can be seen from the hospital record which is part of the charge-sheet.

3. Prosecution case is noted through the facts noted from the witness statements as also two eye witness statements to the incident namely children of the Applicant. On the fateful day i.e. 21.02.2020, Applicant came home in the evening in an inebriated state when his wife asked him for some money to buy milk. It led to an altercation between them. The altercation turned into a scuffle and Applicant assaulted his wife. However, during that period Applicant had also consumed three more bottles of liquor which he had brought and continued quarreling and assaulting the deceased victim wife and ultimately in a fit of rage emptied a can containing kerosene kept in the house on his wife and lit the matchstick leading to the fateful incident.

4. When the quarrel started Applicant bolted the house from inside and when the incident occurred his children started shouting and neighbours gathered outside the house but could not enter inside. After the incident the wife herself opened the door and ran out where the neighbours who had gathered doused the fire with water and immediately called for an Ambulance and took her to hospital for treatment. Unfortunately the wife victim succumbed to injuries five days later.

5. *Prima facie*, the aforesaid facts are undisputed which emanate from the record of the case on the basis of the statements

recorded by the prosecution including the statements of the eye witnesses. They are duly supported by the dying declarations of the deceased victim also and hence Ms. Bajoria, learned APP would persuade the Court to consider the gravity of the crime and would submit that the said crime is witnessed by the children whose statement is recorded confirming that Applicant is the perpetrated of the crime. Hence she would submit that, Application for bail be rejected. She would also urge the Court that appropriate directions be passed to the Trial Court to expedite the trial considering the gravity of the crime.

6. I have considered the rival submissions made by the learned appointed Advocate for Applicant and the learned APP for the State and perused the record of the case.

7. *Prima facie* what impels me to consider the present Application is the long incarceration of the Applicant and no progress of the trial in question despite the trial having been expedited by the learned Sessions Court in the year 2022 which is borne out from the record. That apart, even on the aspect of merit, I would like to state that the said crime is not pre-meditated or planned. No doubt, the severity of the said crime does *prima facie* shakes the conscious of the Court but the Court cannot merely consider the severity of the crime and disregard other relevant considerations which are also equally

important in criminal jurisprudence.

8. Applicant is incarcerated from more than 5 years, his prolonged incarceration militates against his most precious fundamental right guaranteed under Article 21 of the Constitution of India which entitles him to have an appropriate verdict in the matter that having not been done. Roznama of the Trial Court which is placed on record by the learned appointed Advocate for Applicant *prima facie* shows that date after date after 2022 the trial stands adjourned for the purpose of one and only one reason namely "Evidence". While passing the previous order dated 06.03.2025, I have noted that though the charge has been framed as far back as on 17.02.2022 and the prosecution has desired to examine 21 probable witnesses as enlisted in the charge-sheet, trial has not commenced and that is the precise reason for me to consider the Application for grant of bail.

9. It is seen that while dealing with Bail Applications the material available for consideration and adjudication is limited. It is brought to the notice of the Court that trials are taking perpetuity to conclude and prisons are also simultaneously overcrowded in some segments. This Court regularly deals with Bail Applications of under-trials who have been in custody for long period and is also equally aware of the conditions of our prisons. To give an example in the city

of Mumbai, recently in one of the cases before me, a Report dated 12.12.2024 made by the Superintendent of Mumbai Central Prison addressed to the Chief Government Pleader was placed before me by the Public Prosecutor which stated that the Mumbai Central Prison (Arthur Road Jail) is overcrowded beyond its sanctioned capacity by more than 5 – 6 times and every barrack sanctioned to house 50 inmates as on date houses anywhere between 220 – 250 inmates. Such an incongruity leads us to answer the proposition: ***"How can Courts find a balance between the two polarities?"***

10. Argued before me is a case concerning liberty of an under-trial who has been incarcerated for 5 years, 1 month and 11 days, a situation impacting the rights of under-trials conferred by Article 21 of Constitution to speedy justice as also personal liberty. In so far as the power of High Court to grant bail is concerned, when the case is such that involves a question of personal liberty of an under-trial who is incarcerated for a very long period, the powers are wide and unfettered by conditions, the principle rule being that bail is the rule and refusal is the exception, allowing accused persons to better prepare their defence.

11. In the case of ***Emperor Vs. H.L. Hutchinson***[1]***,*** the Allahabad High Court, as far back as in the year 1931 held that power of granting bail conferred on High Court is entirely unfettered by any conditions. It

1 AIR 1931 ALL 356

held that legislature has given the High Court and the Court of Session discretion unfettered by any limitation other than that which controls all discretionary powers vested in a Judge, viz. that the discretion must be exercised judiciously. The Court has given primacy to the fact that accused person if granted bail will be in a much better position to defend himself. In this very case, it was delineated that grant of Bail is the Rule and refusal is an exception. This was in the famous Meerut Conspiracy case. Justice Mukerji writing for the Bench in paragraph No.9 held as under:-

> *"9. Speaking for myself, I think it very unwise to make an attempt to lay down any particular rules for the guidance of the High Court, having regard to the fact that the legislature itself left the discretion of the Court entirely unfettered. The reason for this action on the part of the legislature is not far to seek. The High Court might be safely trusted in this matter and it goes without saying that it would act in the best interests of justice whether it decides in favour of the prosecution or the defence. The variety of cases that may arise from time to time cannot be safely classified and it will be dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes."*

12. In the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation***[2], in paragraph Nos.6 to 15 the Supreme Court considered the prevailing situation of prisons in India, definition of trial and bail, principle of presumption of innocence and reiterated the well recognised principle that bail is the rule and jail is the exception in bail jurisprudence on the touchstone of Article 21 of the Constitution of India. Paragraph Nos.6 to 15 of the said judgement read as under:-

2 (2022) 10 SCC 51

"Prevailing situation

6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.

Definition of trial

7. The word "trial" is not explained and defined under the Code. An extended meaning has to be given to this word for the purpose of enlargement on bail to include, the stage of investigation and thereafter. Primary considerations would obviously be different between these two stages. In the former stage, an arrest followed by a police custody may be warranted for a thorough investigation, while in the latter what matters substantially is the proceedings before the court in the form of a trial. If we keep the above distinction in mind, the consequence to be drawn is for a more favourable consideration towards enlargement when investigation is completed, of course, among other factors.

8. Similarly, an appeal or revision shall also be construed as a facet of trial when it comes to the consideration of bail on suspension of sentence.

Definition of bail

9. The term "bail" has not been defined in the Code, though is used very often. A bail is nothing but a surety inclusive of a personal bond from the accused. It means the release of an accused person either by the orders of the court or by the police or by the investigating agency.

10. It is a set of pre-trial restrictions imposed on a suspect while enabling any interference in the judicial process. Thus, it is a conditional release on the solemn undertaking by the suspect that he would cooperate both with the investigation and the trial. The word "bail" has been defined in Black's Law Dictionary, 9th Edn., p. 160 as:

> *"A security such as cash or a bond; esp., security required by a court for the release of a prisoner who must appear in court at a future time."*

11. *Wharton's Law Lexicon, 14th Edn., p. 105 defines "bail" as:*

> *"to set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and at a place certain, which security is called bail, because the party arrested or imprisoned is delivered into the hands of those who bind themselves or become bail for his due appearance when required, in order that he may be safely protected from prison, to which they have, if they fear his escape, etc. the legal power to deliver him."*

Bail is the rule

12. *The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India. This Court in Nikesh Tarachand Shah v. Union of India [Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1 : (2018) 2 SCC (Cri) 302] , held that : (SCC pp. 22-23 & 27, paras 19 & 24)*

> *"19. In Gurbaksh Singh Sibbia v. State of Punjab [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] , the purpose of granting bail is set out with great felicity as follows : (SCC pp. 586-88, paras 27-30)*
>
> > *'27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra Nath Chakravarti, In re [Nagendra Nath Chakravarti, In re, 1923 SCC OnLine Cal 318 : AIR 1924 Cal 476] , AIR pp. 479-80 that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the "Meerut Conspiracy cases" observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [K.N. Joglekar v. Emperor, 1931 SCC OnLine All 60 : AIR 1931 All 504] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there*

was no hard-and-fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. H.L. Hutchinson [Emperor v. H.L. Hutchinson, 1931 SCC OnLine All 14 : AIR 1931 All 356] , AIR p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. Coming nearer home, it was observed by Krishna Iyer, J., in Gudikanti Narasimhulu v. Public Prosecutor [Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240 : 1978 SCC (Cri) 115] that : (SCC p. 242, para 1)

> *"1. … the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. … After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law". The last four words of Article 21 are the life of that human right."*

29. In Gurcharan Singh v. State (Delhi Admn.) [Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the Court, that : (SCC p. 129, para 29)

> *"29. … There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the*

exercise of judicial discretion in granting or cancelling bail."

30. In American Jurisprudence (2nd Edn., Vol. 8, p. 806, para 39), it is stated:

"Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end."

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.'

* * *

24. Article 21 is the Ark of the Covenant so far as the Fundamental Rights Chapter of the Constitution is concerned. It deals with nothing less sacrosanct than the rights of life and personal liberty of the citizens of India and other persons. It is the only article in the Fundamental Rights Chapter (along with Article 20) that cannot be suspended even in an emergency [see Article 359(1) of the Constitution]. At present, Article 21 is the repository of a vast number of substantive and procedural rights post Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] ."

13. *Further this Court in Sanjay Chandra v. CBI [Sanjay Chandra v. CBI, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] , has observed that : (SCC p. 52, paras 21-23)*

"21. In bail applications, generally, it has been laid down from the earliest times 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 is 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.

> *22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.*
>
> *23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."*
>
> ***Presumption of innocence***
>
> ***14.*** *Innocence of a person accused of an offence is presumed through a legal fiction, placing the onus on the prosecution to prove the guilt before the court. Thus, it is for that agency to satisfy the court that the arrest made was warranted and enlargement on bail is to be denied.*
>
> ***15.*** *Presumption of innocence has been acknowledged throughout the world. Article 14(2) of the International Covenant on Civil and Political Rights, 1966 and Article 11 of the Universal Declaration of Human Rights, 1948 acknowledge the presumption of innocence, as a cardinal principle of law, until the individual is proven guilty."*

13. The Supreme Court in a landmark decision of 1978 in the case of ***Gudikanti Narasimhulu & Ors. Vs. Public Prosecutor, High Court of Andhra Pradesh***[3] *observed as under:-*

> *"6. Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve. When the case is finally disposed of and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage and the* ***principal rule to guide release on bail should be to secure the presence of the***

3 1978 (1) SCC 240

> ***applicant who seeks to be liberated, to take judgment and serve sentence in the event of the court punishing him with imprisonment.*** *In this perspective…" (emphasis supplied)*

14. Thereafter the Supreme Court in a plethora of judgments have discussed the rights conferred by Article 21 qua grant of bail and that such rights cannot be taken away unless the procedure is reasonable and fair and in cases where there is unreasonable delay in trial it would undoubtedly impact the rights of an under-trial. Some of the important decisions of the Supreme Court and some of the High Courts are discussed herein under:-

14.1. In the landmark judgment of ***Maneka Gandhi Vs. Union of India***[4], the Supreme Court held that the right to life and personal liberty under Article 21 is not limited to mere physical existence but includes the right to live with dignity. The court emphasized that the procedure established by law must be fair, just, and reasonable, and it cannot be arbitrary, oppressive, or unreasonable.

14.2. In the case of ***Hussainara Khatoon Vs. Home Secy., State of Bihar***[5] the Supreme Court held as under:-

> *"Now obviously procedure prescribed by law for depriving a person of liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of*

4 1978 (1) SCC 248
5 (1980) 1 SCC 81

> *the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21."*

14.3. The Supreme Court in the case of ***Shaheen Welfare Association Vs. Union Of India***[6] dealing with a Public Interest Litigation seeking relief for under-trial prisoners charged under the Terrorist and Disruptive Activities (Prevention) Act, 1987 due to gross delay in disposal of cases qua Article 21 of the Constitution of India held as under:-

> *"10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh's case (supra), on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21."*

14.4. The Supreme Court in the case of ***Union of India v. K. A. Najeeb***[7] while commenting upon the possibility of early completion of trial and extended incarceration held as under:-

> *"18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond*

6 1996 SCC (2) 616

7 Criminal Appeal No. 98 of 2021

> *any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected."*

15. Applicant in present case has been in custody for 5 years, 1 one month and 11 days. There is no possibility of the trial commencing in the near future. Detaining an under-trial prisoner for such an extended period pending trial further violates his fundamental right to speedy trial flowing from Article 21 of the Constitution. At this juncture, I deem it appropriate to list certain observations of the Supreme Court shedding light on concerns underlying the "Right to speedy trial" from the point of view of an accused in custody whose liberty is affected. In the case of ***Abdul Rehman Antulay & Ors. Vs R.S. Nayak & Anr.***[8] the Supreme Court held as under:-

> *"86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:*
>
> *(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.*
>
> *(2) Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view.*
>
> ***(3) The concerns underlying the Right to speedy trial from the point of view of the accused are:***
>
> ***(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be***

8 1992 (1) SCC 225

> *subjected to unnecessary or unduly long incarceration prior to his conviction;*
>
> *(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and*
>
> *(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.*
>
> *(4) – (11) -------x-------"* *(emphasis supplied)*

16. The Supreme Court has also held in a series of judgments and orders that in situations where the under-trial-prisoner / accused persons have suffered incarceration rather long incarceration for a considerable period of time and there is no possibility of the trial being completed within the foreseeable future, Constitutional Courts can exercise power to release the accused under-trial on bail, as bail is the rule and jail is the exception.

17. In the case of ***Supreme Court Legal Aid Committee (Representing under-trial prisoners) Vs. Union of India***[9], the Supreme Court has held that:-

> *"17. We are conscious of the fact that the menace of drug trafficking has to be controlled by providing stringent punishments and those who indulge in such nefarious activities do not deserve any sympathy. But at the same time we cannot be oblivious to the fact that many innocent persons may also be languishing in jails if we recall to mind the percentage of acquittals. Since harsh punishments have been provided for under the Act, the percentage of disposals on plea of guilt is bound to be small; the State Government should, therefore, have realised the need for setting up sufficient number of Special Courts immediately after the amendment of the Act by Amendment Act 2 of 1989. Even after the Division Bench of the Bombay High Court refused to grant en bloc enlargement on bail on 1-2-1993 in Criminal Application No. 3480 of 1992 and*

9 (1995) 4 SCC 695

> *B.D. Criminal No. 565 of 1992, no substantial improvement in the pendency is shown since new cases continue to pour in, and, therefore, a one-time exercise has become imperative to place the system on an even keel. We also recommend to the State Government to set up Review Committees headed by a Judicial Officer, preferably a retired High Court Judge, with one or two other members to review the cases of undertrials who have been in jail for long including those released under this order and to recommend to the State Government which of the cases deserve withdrawal. The State Government can then advise the Public Prosecutor to move the court for withdrawal of such cases. This will not only. help reduce the pendency but will also increase the credibility of the prosecuting agency. After giving effect to this order the Special Court may consider giving priority to cases of those undertrials who continue in jail despite this order on account of their inability to furnish bail."*

18. In the case of ***Avinash Ashok Torane Vs. The State of Maharashtra***[10], this Court (Coram: N.J. Jamadar, J.) while dealing with a bail application for offence under Section 302 of IPC considering parity with another co-accused who was enlarged on bail considered the unlikelihood of completion of trial coupled with the period of long incarceration of 1 year 3 months of the Applicant and enlarged him on bail.

19. In the case of ***Sonu Parmeshwar Jha Vs. The State of Maharashtra***[11] this Court (Coram: M.S. Karnik, J.) was dealing with a bail application for offences under Sections 302 and 304(b) of IPC and considering circumstantial evidence against the accused as well as long incarceration of accused of 1 year 7 months enlarged him on bail.

20. In the case of ***Rup Bahadur Magar @ Sanki @ Rabin Vs.***

10 Bail Application No.3535 of 2023 decided on 08.01.2024
11 Bail Application No.4122 of 2021 decided on 18.01.2023

State of West Bengal[12]***,*** in a case under Sections 394, 395, 397, 307 readwith 120-B of IPC, the Supreme Court granted bail to the accused considering long incarceration undergone by him of 2 years and 9 months.

21. In the case of ***Santosh Ramprasad Hairijan Vs. The State of Maharashtra***[13]***,*** in a case under Section 302 of IPC this Court taking into account long period of incarceration undergone by accused of 3 years 4 months granted him bail.

22. In the case of ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Anr.***[14], the Supreme Court while granting bail to accused incarcerated for 4 years in paragraph Nos.16 and 17 held as under:-

> *"16. Criminals are not born but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.*
>
> *17. 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."*

12 Criminal Appeal No.4144 of 2024 decided on 04.10.2024
13 Bail Application No.1819 of 2024 decided on 29.11.2024
14 (2024) 9 SCC 813

23. In the case of ***Balwinder Singh Vs. State of Punjab and Anr.***[15], in a case under Sections 302 and 307 of IPC the Supreme Court granted bail to the accused who was behind bars for 4 years citing unlikelihood of completion of trial in the near future as also on parity with the co-accused.

24. In the case of ***Roland Victor Monterio Vs. State of Maharashtra***[16], this Court (Coram: N.J. Jamadar, J.) in a case under Sections 302, 304-B and 498-A of the IPC granted bail to the accused on account of his long incarceration of 4 years. Similarly in the case of ***Naresh Harishchandra Mali Vs. The State of Maharashtra***[17], this Court (Coram: N.J. Jamadar, J.) in a case under Sections 302 and 307 of IPC granted bail to the accused as he was in prison for a period of more than 5 years.

25. Recently, the Delhi High Court in the case of ***Raghvendr Singh Vs. State of NCT of Delhi***[18] granted bail to the Accused who was indicted for offence of murder citing his long incarceration for a period of 5 and half years and enlarged him on bail.

26. In view of the facts and circumstances of the present case and the citations cited herein above and long incarceration of the Applicant over a period of 5 years, 1 month and 11 days and that the

15 SLP (Crl.) No.8523 of 2024
16 Bail Application No.1981 of 2023 decided on 11.01.2024
17 Bail Application No.3858 of 2022 decided on 27.07.2023
18 2025 SCC Online Del 21

trial would not be completed in the near foreseeable future, I am inclined to grant bail to the Applicant.

27. Hence, Bail Application is allowed subject to the following terms and conditions:-

(i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount;

(ii) Applicant is permitted to furnish provisional cash bail of Rs.15,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.15,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;

(iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;

(iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

(v) Applicant shall attend the trial Court on first Monday of every month between 11.00 a.m. and 1.00 p.m. to mark

his presence. If the first Tuesday of the said month falls on a holiday and/or non Court working day, the Applicant shall mark presence on the next working day;

(vi) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;

(vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(viii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and

(ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

28. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

29. Mr. Karnik's efforts in the present case are appreciated by the Court. Fees of Mr. Karnik, learned Advocate appointed through Legal Aid to represent and espouse the cause of Applicant shall be released by the Registry of this Court within a period of one week from the date of presentation of a server copy of this order on due compliance.

30. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

AJAY TRAMBAK UGALMUGALE

Digitally signed by AJAY TRAMBAK UGALMUGALE
Date: 2025.04.03 11:32:00 +0530