

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.944 OF 2024

Siddharth Shashikant Mayekar

.. Applicant

Versus

The State of Maharashtra

.. Resopndent

.....

- Mr. Ramanik Pawar a/w. Ms. Samiksha Pawar, Ms. Trupti Jambulkar, Samadhan Mahmulkar, Ms. Shubhangi Kadam and Mr. Pankaj Mule, Advocates for Applicant.
- Mr. Balraj Kulkarni, APP for State of Maharashtra.
- Mr. Sanjay Taralgatti, PI, AEC, Crime Branch.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 31, 2025

P.C.:

1. Heard Mr. Pawar, learned Advocate for Applicant and Mr. Kulkarni, learned APP for State.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking Bail in connection with C.R. No.72 of 2021 registered with DCB CID for offences under Sections 387, 307, 325, 323, 120-B, 506(2), 143, 144, 147, 148, 149 of the Indian Penal Code, 1860 (for short 'IPC') readwith Sections 3(1) (ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crimes Act, 1999 (for short 'MCOC Act'). There are total six accused indicted in the crime. Present Applicant is arraigned as accused No.2 and is incarcerated since 25.08.2021.

3. Briefly stated, it is prosecution case that in Girgaon area in Mumbai, accused No.1 Deepak Walekar @ Dipu operates a crime syndicate namely “Pandavputra” which extorts money from businessmen and Mathadi labourers and the present Applicant alongwith other co-accused are members of the said gang. First Informant is a batch holder of Mathadi workers employed on construction sites and in the month of June 2019, he was working at a construction site at Khotwadi, Girgaon and in August 2019 he allegedly received a phone call from present Applicant on behalf of the Pandavputra gang who asked him to meet accused No.1 and threatened him. Thereafter it is alleged that after 2/3 months, First Informant received a phone call from a security guard on the same construction site who informed him that some persons had stopped the construction work and when he went there they threatened him and asked him to meet accused No.1. As per prosecution, on the next day First Informant went to the office of Applicant at Kumbharwada, Girgaon wherein accused No.1 alongwith Applicant and other co-accused were present who asked him to stop the construction work and when First Informant refused they demanded 30% amount out of his income as extortion money. It is also alleged that present Applicant threatened First Informant and asked him to deploy his acquaintances on his construction site and also pay them higher wages alongwith conveyance. It is alleged that Applicant asked the First Informant for

all the bills / receipts of his construction work for calculation of the 30% extortion amount and First Informant has sent photos of the same to the Applicant on Whatsapp.

3.1. Thereafter it is alleged that on 19.08.2021 at 13:30 hours Applicant called First Informant to his office wherein accused Nos.1 and 4 and 2-3 other persons were present and they demanded money from him, which he agreed to pay within 2 days. On 22.08.2021 at 23:42 hours Applicant made a call to First Informant and asked him to meet accused No.1 at Sutar Gully No.1 and when First Informant went over there, Applicant abused him and made him to sit on a bench and thereafter on instructions of accused No.1, accused No.3 assaulted him with fist blows; accused Nos.2 – Applicant, 5 and 6 also assaulted him and accused No.4 threatened him by holding a knife at his neck. It is alleged that the accused persons also assaulted another person who accompanied the First Informant. Accordingly on 24.08.2021, First Informant lodged complaint against the accused. On 03.09.2021, prior approval as per Section 23(1)(a) of the MCOC Act came to be accorded and offences under Sections 3(1)(ii), 3(2) and 3(4) of MCOC Act came to be invoked.

4. Mr. Pawar, learned Advocate for Applicant would at the outset submit that there is a delay of 48 hours in lodging the FIR by First Informant after the last incident and the first incident alleged in

prior to three years. He would submit that role attributed to the Applicant is that of being an associate of the main accused No.1 and it is alleged that on his instructions Applicant has contacted the First Informant, threatened him and demanded money from time to time. He would submit that so far as the incident which occurred on 22.08.2021 is concerned the present Applicant has no role in the same and major allegations are against accused No.1 being the kingpin of the Pandavputra gang and accused No.4 who has assaulted First Informant and threatened by holding knife at his neck. He would submit that even for the sake of arguments if the incident of 22.08.2021 is accepted, the First Informant has been inflicted with injuries of simple nature and hence Section 325 of IPC cannot be attracted in the present case.

4.1. He would submit that the Sanctioning Authority has mechanically granted sanction for invoking provisions of MCOC Act against the present Applicant as there is not a single predicate offence punishable with imprisonment for more than three years placed on record by prosecution in the preceding ten years against the Applicant. He would submit that as the provisions of the MCOC Act are inapplicable against the present Applicant, rigours of Section 21(4) cannot be applied in the present case. In this regard he has referred to and relied upon the decision of the Supreme Court in the case of

*Mohd. Ilyas Mohamad Bilal Kapadiya Vs. State of Gujarat*¹ and decision of this Court in the case of *Rajendra Karbhari Kale Vs. The State of Maharashtra & Ors.*².

4.2. In so far as the confessional statement dated 08.09.2021 of Applicant recorded under Section 18(1) of the MCOC Act by the DCP Zone-I Mumbai whereby he has admitted to commission of the crime is concerned, Mr. Pawar would submit that the same is inadmissible in law and is vitiated as the prosecution has failed to comply with the mandatory provision of Section 18(4) of the MCOC Act whereby every accused whose confession is recorded under Section 18(1) has to be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate with the original confessional statement without unreasonable delay. Hence he would argue that on perusal of the entire material / evidence available on record in the charge-sheet, no corroborative evidence has been placed on record against the Applicant.

4.3. He would submit that the Applicant is in custody for the past 3 years 5 months and 7 days and considering the facts and circumstances of the present case, his further incarceration is unwarranted. He would submit that investigation is completed and charge-sheet is filed and there is no possibility of the trial being

¹ (2022) 13 SCC 817

² 2017 All MR (Cri) 824

concluded in the foreseeable future. He would submit that the mobile phone of Applicant is seized by prosecution and there is no recovery or discovery pending at the behest of present Applicant. In view of his above submissions, he would pray for enlargement of Applicant on bail on any stringent terms and conditions as deemed fit by the Court.

5. *PER CONTRA*, Mr. Kulkarni, learned APP for State has vehemently opposed the Bail Application. He has drawn my attention to the Affidavit dated 06.05.2024 filed by prosecution to oppose grant of bail to present Applicant and would submit that prosecution has recorded statements of 5 eye-witnesses who have corroborated the version of First Informant regarding the incident dated 22.08.2021. He would submit that First Informant has also placed on record the audio recording of his phone calls with Applicant wherein Applicant has threatened him. He would submit that present Applicant alongwith other accused hatched a conspiracy to extort money from First Informant and prosecution has recorded statements of witnesses which establishes involvement of Applicant in the present crime. He would submit that Applicant is an active member of Pandavputra gang and is a notorious criminal and conspirator in the present crime and his role in the crime can be clearly culled out from the material placed on record in the charge-sheet. In support of his submissions, Mr. Kulkarni has placed reliance on the decision of the Supreme Court in the case of

*Kavitha Lankesh Vs. State of Karnataka and Ors.*³ and this Court in the case of *Govind Sakharam Ubhe Vs. The State of Maharashtra*⁴. In view of his above submissions, Mr. Kulkarni would urge the Court to reject the Bail Application of the Applicant.

6. In the present case it is seen that there is no offence punishable with more than 3 years registered against the Applicant in the preceding 10 years which has been brought on record by prosecution against the Applicant and hence invocation of provisions of the MCOC Act is at the outset not made out against the Applicant. Applicant is an Electrician. From the perusal of the material placed on record it is clear that Applicant has acted on the instructions of the main accused No.1 who is the kingpin of Pandavputra gang. There is an apparent delay of 48 hours in filing the FIR after the last incident occurred in 2021. The first incident is of August 2019. Admittedly there is no recovery or discovery remaining at the instance of the present Applicant.

7. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the Court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he

³ Criminal Appeal Diary No.13309 of 2021 decided on 21.10.2021

⁴ Criminal Appeal No.18 of 2009 decided on 11.06.2009

would influence the witnesses and tamper with the evidence, his antecedents are required to be considered in such cases.

8. 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?”***

9. Argued before me is a case concerning liberty of an under-trial who has been incarcerated for 3 years 5 months and 7 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.

10. In the case of *Emperor Vs. H.L. Hutchinson*⁵, 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 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 Mukherjea 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

5 AIR 1931 ALL 356

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.”

11. In the case of *Satender Kumar Antil Vs. Central Bureau of Investigation*⁶, 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:-

“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

6 (2022) 10 SCC 51

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.”

12. The Supreme Court in a landmark decision of 1978 in the case of *Gudikanti Narasimhulu & Ors. Vs. Public Prosecutor, High Court of Andhra Pradesh*⁷ 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 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)

13. Thereafter the Supreme Court in a plethora of judgements 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 undertrial. Some of the important decisions of the Supreme Court and some of the High Courts are discussed herein under:-

⁷ 1978 (1) SCC 240

13.1. In the landmark judgement of *Maneka Gandhi Vs. Union of India*⁸, the Supreme Court held that the right to life and personal liberty under Article 21 is not limited to mere animal 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.

13.2. In the case of *Hussainara Khatoon Vs. Home Secy., State of Bihar*⁹ the Supreme Court held as under:-

“Now obviously procedure prescribed by law for depriving a person of liberty cannot “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 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.”

13.3. The Supreme Court in the case of *Shaheen Welfare Association Vs. Union Of India*¹⁰ 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:-

8 1978 (1) SCC 248

9 (1980) 1 SCC 81

10 1996 SCC (2) 616

“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.”

13.4. The Supreme Court in the case of *Union of India v. K. A. Najeer*¹¹ 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 any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.”

14. Applicant in present case has been in custody for 3 years 5 months and 7 days. There is no possibility of the trial commencing in the near future. Detaining an under-trial prisoner for such an extended period 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

¹¹ Criminal Appeal No. 98 of 2021

of *Abdul Rehman Antulay & Ors. Vs R.S. Nayak & Anr.*¹² 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 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)

15. The Supreme Court has also held in a series of judgements 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

¹² 1992 (1) SCC 225

exercise power to release the accused under-trial on bail, as bail is the rule and jail is the exception.

16. In the case of *Supreme Court Legal Aid Committee (Representing undertrial prisoners) Vs. Union of India*¹³, 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 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.”

17. Mr. Kulkarni, learned APP has drawn my attention to the CDRs record at page No.287 of the Application and some of the transcripts which are appended at page No.133 onwards of the

¹³ (1995) 4 SCC 695

Application in order to drive home the point that Applicant before me was directly involved in administering threats to the Complainant. He would submit the fact that Applicant was in constant touch with principal main accused namely Deepak Walekar @ Dipu who is arraigned as accused No.1 which is evident from the said CDR record and transcript. He would submit that Supreme Court has in the case of ***X Vs. State of Rajasthan and Anr.***¹⁴ in paragraph No.16 observed that once the trial commences it should be allowed to reach its final conclusion which may either result in the conviction of accused or acquittal of accused and the High Court should restrain from exercising its discretion in favour of accused and order to release of accused on bail. He would submit that justification of releasing the accused on bail can only be allowed if the trial is going to be unduly delayed for no fault of accused and not on any other ground. I have perused the judgment handed over by Mr. Kulkarni. *Prima facie*, it is seen that CDR transcripts pertain to a summary with respect to calls made *inter se* between accused persons wherein Applicant before me is also one of accused. There is no corroboration to show the direct complicity of applicant before me. In so far transcripts at page No.133 are concerned, on perusing the same it is *prima facie* seen that the threat of extortion is given by principal accused whose name is clearly evident in the transcript. In so far as role of Applicant before me is concerned,

¹⁴ Special Leave Petition (Criminal) No.13378 of 2024 dated 27.11.2024.

there is an oblique reference of the said Applicant also in those transcripts but that would not be sufficient enough for me to consider the submission made by learned APP for rejecting the Bail Application. That apart, I have considered the submission argued before me that three witnesses have already been examined, however it is not clear that in the foreseeable future, the trial will be over. Considering the incarceration of Applicant for 3 years 5 months and 7 days and more specifically the fact that judgment referred to and relied upon by learned APP is clearly distinguishable on facts since that judgment is in the case of matter under the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO'), I am inclined to allow the Application for grant of bail and reject the submissions made by learned APP. Considering the facts of the present case coupled with above judicial pronouncements and long incarceration of Applicant of 3 years 5 months 7 days, the Applicant has made out a case for grant of bail.

18. In view of the above, I am of the opinion that Applicant deserves to be enlarged on bail. Hence, the following order:-

- (i) Applicant – Siddharth Shashikant Mayekar who is facing trial in MCOC Special Case No.1451 of 2021 pending on the file of Additional Sessions Judge, Mumbai, is ordered to be released on bail on furnishing

P.R. Bond in the sum of Rs.50,000/- (Rs. Fifty Thousand only) with one or two sureties of the like amount;

- (ii) Applicant shall not enter or reside in the jurisdiction of V.P. Road Police Station and Dr. D.B. Marg Police Station (Lamington Road Police Station) for a period of five years or until the trial is concluded, whichever is earlier. Applicant shall report to the concerned Investigating Officer as and when called and not otherwise;
- (iii) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates, unless specifically exempted;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (v) Applicant shall not establish contact with First Informant and /or influence witnesses or tamper with the evidence in any manner;
- (vi) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from

time to time, as applicable;

(vii) Applicant shall surrender his passport, if any, with the Trial Court; and

(viii) Any infraction of the conditions shall entail prosecution to apply for cancellation of bail granted to the Applicant.

19. The aforesaid observations are *prima facie* on the basis of record of the case which have been argued before me and shall not be considered as an expression of opinion by this Court and is only for the purpose of enlargement of Applicant on bail and shall not influence the trial in the present case.

20. In the above terms, Bail Application stands allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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