

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.5257 OF 2024.

Mahesh Prabhakar Bhoir

...Applicant

Vs

State of Maharashtra

...Respondent

Mr. Ganesh Gupta a/w. Mr. Sahil Ghorpade, Ms. Roshni Naaz, Mr. Madan Khansole, Mr. Surya P. Gupta, J. Patil, Ms. Priyanka Rathod i/b G. G. Legal Associates for the Applicant.

Mr. Avinash A. Naik, APP for the Respondent-State.

Mr. Kisan Bhabad, PSI, Pant Nagar Police Station.

CORAM : MANISH PITALE, J.

DATE : 14th JANUARY, 2024.

P. C. :

1. Heard learned counsel for the applicant and learned APP for the respondent-State.
2. This is the second bail application filed by the applicant before this Court. The first bail application was dismissed on merits by order dated 12/6/2023 passed by this Court in Bail Application No.576/2024.
3. On an earlier occasion the hearing of this application was adjourned while the hearing of bail application of co-accused person was taken up, primarily for the reason that while this application was pending, the applicant was also pursuing Special Leave Petition No.15805/2024 before the Supreme Court challenging the first order

dated 12/6/2023 whereby his bail application was rejected by this Court.

4. Learned counsel for the applicant at the outset informs this Court that on 3/1/2025 the aforementioned special leave petition was withdrawn before the Supreme Court and an order to that effect was passed, copy of which is presented for perusal of this Court. In that view of the matter this Court is inclined to take up the present application for consideration.

5. Learned counsel for the applicant relies upon ***order dated 26/11/2024 passed in Bail Application No.4285/2024 (Sachin Diwakar Pawar vs. State of Maharashtra)*** and ***order dated 14/12/2024 passed in Bail Application No.3465/2023 (Nikhat Khan vs. State of Maharashtra)*** whereby this Court granted bail to co-accused persons only on the ground of period of incarceration suffered by them and considering the status of the trial.

6. Learned counsel for the applicant submits that the applicant was arrested as far back as on 10/12/2018, thereby showing that he has suffered incarceration for more than 6 years. Charge was framed in the present case as recently as on 9/5/2024 and although the charge-sheet shows that 204 witnesses are to be examined by the prosecution it is indicated that at least 180 witnesses would be examined during the course of trial.

7. By highlighting the aforementioned facts the learned counsel for the applicant submits that there is hardly any possibility of the trial being completed within reasonable period of time and therefore, the applicant is also entitled to relief granted to the aforementioned identically situated co-accused persons .

8. Learned APP on the other hand submits that perusal of 479 of Bhartiya Nagrik Suraksha Sanhita, 2023 (for short, BNSS), equivalent to Section 436A of Cr.P.C. and the law in that regard would show that merely because the applicant has been incarcerated for the period of 6 years cannot be a ground for releasing him on bail, as the maximum punishment that can be imposed in the present case is imprisonment for life or even death. It is submitted that the Supreme Court in the case of ***X vs. State of Rajasthan and Anr. by order dated 27/11/20224 passed in Special Leave Petition (Criminal) No.13378/2024*** has laid down that the Court would not ordinarily entertain bail application of accused persons when serious offences like murder, rape, dacoity etc are involved and trial has already commenced. It is submitted that in the present case charge is already framed and therefore, this Court may not show any indulgence to the applicant.

9. It would be appropriate to refer to the relevant portion of the order dated 26/11/2024 passed in Bail Application No.4285/2024, whereby co-accused Sachin Diwakar Pawar was granted bail by this

Court. It is to be noted that the said application was also second bail application of the said accused person, while his earlier bail application has been dismissed by this Court. Relevant portion of the said order reads as follows:

"8. This Court has considered the rival submissions in the light of the documents placed on record. It is undisputed that the applicant has remained behind bars since 08.12.2018. This is for a period of almost 6 years pending trial. Although the charge-sheet was filed in the year 2019 itself, charge could be framed as recently as on 09.05.2024. It is matter of record that not a single witness has been examined. It is further undisputed that the charge-sheet gives a list of 204 witnesses and it is indicated by the prosecution that as many as 180 witnesses would be examined during the course of the trial. This obviously shows that the trial is not likely to be completed within a reasonable period of time. Considering the pressure of work on the trial courts, especially in Mumbai, it would be unreasonable to expect the trial court to take up each and every trial in a time bound manner.

9. Although it is sought to be indicated that the accused in the present case are partly to blame for delay in the proceedings before the trial court, the documents placed on

record indicate that on a number of occasions, the accused themselves could not be produced before the trial court. It is also matter of record that the applicant had moved applications for speedy trial before the trial court and allegations were made against the prosecution for delay in the proceedings before the trial court.

10. An impression is gathered by this Court that perhaps due to extremely high work load on the trial court, the proceedings in the present case also have not progressed at an expeditious pace. Considering the number of witnesses to be examined by the prosecution, it is clear that the trial cannot be completed within a reasonable period of time.

11. In such circumstances, the law laid down by the Supreme Court does inure the benefit of the applicant. The Supreme Court in a recent judgment in the case of Javed Gulam Nabi Shaikh vs. State of Maharashtra and another (2024 SCC OnLine SC 1693) has taken into consideration series of judgments including judgments in the case of Union of India vs. K. A. Najeeb [(2021) 3 SCC 713] and Satender Kumar Antil vs. Central Bureau of Investigation [(2022) 10 SCC 51], reiterating the position of law that in such circumstances, considering the right of speedy trial as a facet or right to life,

under Article 21 of the Constitution of India, the Constitutional Courts must exercise their power to enlarge such accused under trials on bail.

10. Subsequently by order dated 14/12/2024, for identical reasoning, co-accused Nikhat Khan was also granted bail.

11. This Court is of the opinion that said co-accused persons were granted bail on the basis of the law laid down by the Supreme Court in the above quoted judgments, including judgment in the case of ***Javed Gulam Nabi Shaikh vs. State of Maharashtra and Anr., 2024 SCC Online SC 1693***, wherein it has been indicated that seriousness of the offences alleged against the accused cannot be a ground to prevent the Constitutional Court from exercising its powers to enlarge accused on bail who has suffered long incarceration and there is hardly any possibility of the trial being completed within reasonable time. In fact, it is indicated that where offences under special statutes are involved wherein accused under trial is required to satisfy higher threshold for being released on bail, the Constitutional Courts can again exercise such power in the aforesaid circumstances. The emphasis is on the right of the accused under trial for speedy trial as a facet of right to life under Article 21 of the Constitution of India. Therefore, the aforesaid line of judgments and orders passed by this Court in favour of co-accused persons are not rooted in Section 479 of the BNSS,

equivalent to 436A of Cr.P.C. As regards the judgment of the Supreme Court in case of ***X vs. State of Rajasthan (supra)*** suffice it to say that observations of the Supreme Court was made in the context of the said case wherein power of the Constitutional Courts did not come up for discussion and the line of judgments discussed hereinabove was not referred to or distinguished.

12. This Court is convinced that applicant has made out a case on the principle of parity and hence he deserves to be released on bail.

13. In view of the above, application is allowed in the following terms:

(A) The applicant shall be released on bail in connection with F.I.R. No. 571 of 2018 dated 03.12.2018, registered at Pant Nagar Police Station, District- Mumbai, on furnishing P.R. Bond of Rs.50,000/- and one or two sureties in the like amount;

(B) The applicant shall not tamper with the evidence of the prosecution. He shall not influence the informant, witnesses or any other person concerned with the case;

(C) The applicant shall co-operate with the proceedings before the trial Court and he shall attend each and every date, unless specifically exempted by the trial Court;

(E) Upon release, within one week, the applicant shall inform the Investigating Officer as well as the Trial Court about his

contact number and residential address and update the same in case of any change.

14. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

15. The application is disposed of.

[MANISH PITALE, J.]