

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.5411 OF 2024

Jahangir Haiderali Shaikh

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. R. S. Vidyarthi, Advocate i/by Mehboob Shaikh for Applicant.
- Ms. Mahalakshmi Ganapathy, APP for Respondent.
- Mr. Ajay M. Birajdar, API, DCB CID, Unit – 4, Mumbai.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 13, 2025

P.C.:

1. Heard Mr. Vidhyarthi, learned Advocate for Applicant and Ms. Ganapathy, learned APP for Respondent.

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.47 of 2018 registered with DCB CID Unit – 4 for offences punishable under Sections 363, 364-A, 365, 328, 324, 506 readwith 120-B and 34 of the Indian Penal Code, 1860 (for short '**IPC**') and Section 37(1) of the Maharashtra Police Act, 1951. There are total 5 accused in the crime and Applicant before me is arraigned as Accused No.1. He is incarcerated since 06.08.2018 i.e. for 6 years 7 months and 8 days.

3. Prosecution case is that the family of Accused No.5 in order to extract money from the family of First Informant which was affluent hatched a conspiracy and kidnapped Informant's son and kept him in the office of Applicant for seeking ransom. According to prosecution Accused No.5 is the sister-in-law of the Informant. Role attributed to the present Applicant is that on 03.08.2018, he alongwith Co-Accused No.3 arrived in an auto-rickshaw and kidnapped the victim boy aged 13 years kept him overnight in the house of Co-accused No.2 and thereafter shifted him to the office of Co-Accused No.4. As per prosecution case, when the police raided the spot where victim was kept to rescue the victim, Applicant was found with victim.

4. Mr. Vidyarthi, learned Advocate for Applicant would submit that without going into the merits he would align his arguments only on the ground of parity and long incarceration of the Applicant. He would submit that the key conspirator and main accused namely Accused No.5 has been granted bail by this Court on 18.07.2022. Next he would submit that Co-accused No.4 in whose premises victim boy was kept hostage has been granted bail by this Court by order dated 28.02.2025 passed in Bail Application No.323 of 2025 considering his long-incarceration and no possibility of the trial being completed in the foreseeable future. Hence he would submit that on the same facts this Court may consider the present Application.

5. Next my attention is drawn to the order dated 09.08.2023 whereby Bail Application of Co-accused No.4 was disposed as withdrawn in 2020 and after the Court expressed its disinclination to grant bail, this Court in the said order held that it was seen that Applicant was languishing in jail since long and Court therefore directed the learned Sessions Judge to expedite the trial and conclude it within a period of one year from that date. Next my attention is drawn to the order dated 23.09.2024 by which this Court granted extension of time of further one year to dispose of the Sessions case which is the case before the Trial Court.

6. Mr. Vidyarthi would submit that in the above facts considering the long incarceration of the Applicant of 6 years 7 months and 8 days and the slow progress of trial, this Court may be pleased to allow the Bail Application.

7. Ms. Ganapathy, learned APP has vehemently opposed the Bail Application and would submit that Applicant is the main accused and if he is released on bail, he may create impediment in the trial which is under progress. This is argued by the learned APP Ms. Ganapathy after referring to the facts of the case, rather she would submit that the trial is virtually at the end stage and this Court should not show any indulgence in allowing the present Bail Application. In support of her submissions, she has placed before me the Roznama of

the Trial Court dated 25.02.2025, *inter alia*, which when read shows that in so far as the stage of the trial is concerned, on 25.02.2025 the cross-examination of PW-14 was completed and the learned Prosecutor appearing in the trial filed Application below Exhibit 150 for issuing summons to the Nodal Officer of the Vodafone Company, Idea Company and the Medical Officer of Sion Hospital and the learned Trial Court has issued witness summons and the trial was next posted for hearing on 07.03.2025. On 07.03.2025 the matter was adjourned to 15.03.2025 and if the Roznama of 15.03.2025 is perused it is seen that on that date the Court was on leave and the matter is next posted on 20.03.2025.

7.1. Ms. Ganapathy, learned APP would submit that Prosecution desires to examine only few more further witnesses. She has referred to and relied upon the decision of the Supreme Court in the case of *X Vs. State of Rajasthan & Anr.*¹ to contend that in serious offences as in the present case, once the trial commences and prosecution starts examining its witnesses, Courts should be loathe in entertaining the Bail Application. She would therefore urge the Court to consider the aforesaid decision in view of the facts of the case and reject the Bail Application.

8. I am impelled to consider the Application of the Applicant for grant of bail on two grounds, firstly the ground of long

¹ 2024 INSC 909

incarceration of the Applicant pending trial and secondly considering the Roznama of Trial Court and the submissions made by the learned APP regarding examination of the further witnesses and the uncertainty of the trial been completed in the near foreseeable future.

9. There is no imminent probability that the trial would be concluded in the near foreseeable future. In the present case it is seen that the prosecution is likely to examine 2 to 4 more witnesses and further there would be examination of defence witnesses also. Hence the trial is likely to take some time to conclude. Applicant is incarcerated for 6 years 7 months and 8 days. Detaining an under-trial individual for such an extended period violates his fundamental right to speedy trial flowing from Article 21 of the Constitution of India.

10. 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.***² 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

² 1992 (1) SCC 225

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)

11. It is settled law that while deciding a Bail Application a Court 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 would influence the witnesses and tamper with the evidence, his antecedents which are required to be considered in such cases.

12. 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?”***

13. Argued before me is a case concerning liberty of an under-trial who has been incarcerated for 6 years 7 months and 8 days, a situation impacting the right of the under-trial 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 the accused person to better prepare his defence.

14. As far back as in 1923, it was held by the High Court of Calcutta in the case of *In Re: Nagendra Nath Chakravarti*³ that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied while adjudicating Bail Applications 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 used as a tool to withheld as a punishment. The said proposition has been upheld by the Supreme Court in its decision in the case of *Satender Kumar Antil Vs. Central Bureau of Investigation*⁴.

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 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 *Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Anr*⁵, 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

3 1923 SCC OnLine Cal 318

4 (2022) 10 SCC 51

5 (2024) 9 SCC 813

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.”

17. In the case of *Chintan Vidyasagar Upadhyay Vs. The State of Maharashtra*⁶, in a case under Sections 302 and 396 of IPC the Supreme Court granted bail to the accused who had undergone 6 years of pre-trial incarceration. Similarly in the case of *Indrani Pratim Mukerjee Vs. Central Bureau of Investigation*⁷ the Supreme Court in a case under Section 302 of IPC granted bail to the accused, she having undergone pre-trial incarceration of 6 and a half years.

18. Considering the imprimatur of the Supreme Court in the aforesaid decisions, this Court in numerous cases have enlarged the accused indicted for offence under Section 302 of IPC considering the long incarceration and also ground of parity.

19. In view of the above *prima facie* observations and the long incarceration of Applicant for a period of 6 years 7 months and 8 days

⁶ SLP (CrL.) No.2543 of 2021 decided on 17.09.2021

⁷ SLP (CrL.) No.1627 of 2022

as delineated above coupled with no possibility of the trial completing in near foreseeable future, the Bail Application stands allowed on the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount;
- (ii) 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;
- (iii) After his release Applicant shall attend the Investigating Officer on third Saturday of every month between 10.00 a.m. and 12.00 noon to mark his presence for the first six months and thereafter as and when called for. If the third Saturday of the said month falls on a holiday, the Applicant shall mark presence on the next working day;
- (iv) 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;

- (v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vi) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and
- (vii) 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.

20. 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.

21. Bail Application No. 5411 of 2024 is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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