

Ajay

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

**INTERIM APPLICATION NO. 2023 OF 2024
IN
CRIMINAL APPEAL NO. 1049 OF 2019**

Mazhar Maksud Shaikh	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Ravindranath Patil a/w. Mr. Sharad R. Dhore and Ms. Karishma Thakur, Advocates for Applicant.
 - Ms. K.T. Hivrale, APP for Respondent – State.
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**CORAM : MILIND N. JADHAV &
SHYAM C. CHANDAK, JJ.**

DATE : APRIL 24, 2025.

P.C.:

1. Heard Mr. Patil, learned Advocate for Applicant and Ms. Hivrale, learned APP for Respondent – State.

2. Present Interim Application is filed for suspension of sentence and bail pending hearing and final disposal of the Criminal Appeal. Applicant is convicted on 04.11.2015 for offence punishable under Section 302 of the Indian Penal Code, 1860 (for short '**IPC**') and sentenced to suffer life imprisonment. He was arrested on 23.09.2013. The Criminal Appeal was admitted on 13.08.2019. The total period of imprisonment undergone by the Applicant with remission as on 31.12.2024 is 14 years, 7 months and 8 days.

3. Record shows that first Bail Application of Applicant post conviction pending Appeal before the Court was disposed by order dated 22.06.2016 whereas his second Bail Application before the Court was disposed by order dated 21.12.2021.

4. Criminal Appeal filed by the Applicant is still pending before this Court. There is no likelihood of the Criminal Appeal being heard in the near foreseeable future due to the pendency.

5. Learned Advocate for the Applicant has persuaded the Court to consider his case for grant of bail on account of his pending Appeal not being heard finally as also on the ground of long incarceration in prison. He would submit that there are total 6 co-accused persons, 5 out of whom have already been enlarged on bail and significantly role of Applicant is at par and on parity with one of the other co-accused person called 'Rafiq' according to prosecution case. He would submit that role attributed to co-accused 'Rafiq' is identical and similar to that of Applicant of they both having assaulted and inflicted a singular blow each with a stone on the head of the victim. He would submit that the injury certificate corroborates with this fact. He would submit that the Division Bench of this Court by order dated 04.07.2016 has enlarged the said co-accused person 'Rafiq' on bail. Copy of the said order is placed before the Court.

6. In view of the above, considering the role of Applicant which

is seen to be at par and on parity with the other co-accused 'Rafiq', the present Interim Application deserves to be allowed as also equally on the ground of long incarceration of Applicant pending hearing of his Criminal Appeal.

7. 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 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 Mukherjee 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."

¹ AIR 1931 ALL 356

8. The Supreme Court in a landmark decision of 1978 in the case of *Gudikanti Narasimhulu and Ors. Vs. Public Prosecutor, High Court*² has 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)

9. In the landmark judgement of *Maneka Gandhi Vs. Union of India*³, 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.

10. In the case of *Abdul Rehman Antulay & Ors. Vs. R.S. Nayak & Anr.*⁴ 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

2 (1978) 1 SCC 240

3 1978 (1) SCC 248

4 1992 (1) SCC 225

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)

10.1. In the present case though Applicant is convicted he is incarcerated in prison pending hearing of his Criminal Appeal and the principal etched by the Court with respect to his right to speedy trial will apply in the present case equally for the purpose of hearing of his pending Appeal.

11. This Court in the case of *Ganesh Madhukar Mendarkar Vs. The State of Maharashtra*⁵ while referring to an article dated 01.05.2018 “*How prison changes people*”⁶ written by Dr. Christian Jarret, Editor of British Psychological Society's Research Digest published on BBC discussed the negative effects on a person's mental

⁵ Bail Application No.597 of 2025 decided on 14.02.2025 (Bombay HC)

⁶ Available at <https://www.bbc.com/future/article/20180430-the-unexpected-ways-prison-time-changes-people>

and physical health due to long incarceration and granted bail to the Accused who suffered incarceration of more than 9 years in a matter under 302 of IPC. Paragraph No.29 of the judgment is relevant and reads as under:-

“29. In view of the above decisions and considering the long incarceration of the Applicant, I would like to highlight one more important issue which persuades me to consider the present case and that is the effect of long incarceration. Long incarceration can have many negative effects on a person's mental and physical health. Long incarceration can lead to post-incarceration syndrome which can include depression, anxiety and poor self-esteem. It can promote unhealthy behaviours like drug abuse. Inmates face social stigma which can disrupt relationships with family and friends. Incarceration persons often suffer long-term consequences from having been subjected to pain, deprivation and extremely atypical patterns and norms of living and interacting with others. Prima facie incarceration rather long incarceration exposes under-trial accused to carceral environment which can be inherently damaging to the mental health of the under-trial accused coupled with the appalling conditions in the prisons. Researchers have even theorized that incarceration can lead to Post-Incarceration Syndrome, a syndrome similar to PTSD.”

12. In view of the above observations and findings, Interim Application is allowed in the following terms and conditions:-

- (i) During the pendency of the Appeal, the substantive sentence imposed upon the Applicant is suspended;
- (ii) 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; and
- (iii) During the period that Applicant is on bail, he shall report to the concerned Police Station on first Tuesday

of every month between 11.00 a.m. and 1.00 p.m. 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.

13. Interim Application is allowed and disposed.

[SHYAM C. CHANDAK, J.]

[MILIND N. JADHAV, J.]

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