



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO.723 OF 2024

[Sukesh s/o Kaildas Mendhe ..vs.. State of Maharashtra]

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr A. C. Khadse, Advocate for Applicant.
Mr K. R. Lule, APP for Respondent/State.

CORAM : ANIL L. PANSARE, J.

DATE : 23rd JANUARY, 2025.

1. Having heard at length, what transpires is that the applicant is facing trial for the offences punishable under Section 307 of the Indian Penal Code, 1860, Sections 4 and 25 of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act, 1951. He has been arrested on 23.09.2022. The accusation against him is that he brought a sword and inflicted injury on the head of the informant and then fled from the spot. The reason behind attack is previous quarrel with informant's brother.

2. The charge has been framed on 24.04.2023 and since then, not a single witness has been examined by the prosecution. Learned counsel for applicant further submits that out of 38 dates, the applicant was produced before the Court only on three occasions.

3. In context with above, the report of the Sessions Court concerned was called only to find that whatever has been stated by the applicant's counsel is correct. Thus, the applicant is behind bar for inflicting a blow, though serious, for last more than two years.

4. What is painful is that despite framing charge, the prosecution failed to examine a single witness in last one and half years and further the applicant has been not produced before the Court on most of occasions.

5. When enquired, learned Additional Public Prosecutor submits that there are 34 witnesses to be examined. Thus, it will take substantial time to complete the trial. The question is, how long should the person like applicant be kept behind bar, which in a way would amount to punishment without trial, particularly when it is nobody's case that the delay in trial is attributable to the applicant.

6. The Hon'ble Supreme Court in the case of Union of India vs. K.A. Najeeb, [(2021) 3 SCC 713] has, in the context of importance of speedy trial, held thus :

“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

7. Thus, the Supreme Court has held that even where provisions of stringent Act, like the Unlawful Activities (Prevention) Act, 1967 (for short “UAPA”), are invoked, in a given case, benefit of bail can be extended where there are grounds of violation of Part – III of the Constitution.

8. In yet another judgment, i.e., in **Angela Harish Sontakke Vs. State of Maharashtra, [(2021) 3 SCC 723]**, the Supreme Court observed as under :

“2. Leave granted. We have heard the learned counsel for the parties. Charges have been framed against the appellant-accused under Sections 10, 13, 17, 18, 18-A, 18-B, 20, 21, 38, 39 and 40(2) of the Unlawful Activities (Prevention) Act, 1967, amended 2008 and Sections 387, 419, 465, 467, 468, 471 read with Section 120-B of the Penal Code, 1860. Undoubtedly, the charges are serious but the seriousness of the charges will have to be balanced with certain other facts like the period of custody suffered and the likely period within which the trial can be expected to be completed.”

In this case, provisions of UAPA were invoked. Charges were framed. The Supreme Court observed that charges were serious; thereafter held that seriousness of charges will have to be balanced with certain other factors, like period of custody suffered and the likely period within which the trial can be expected to be completed.

9. As such, learned A. P. P. submits that on merit, there is evidence to show that the applicant has assaulted the informant, the fact remains that he is awaiting trial for more than two years. As noted above, the charge has been framed on 24.04.2023 and not a single witness has been examined till today. The prosecution intends to examine 34 witnesses.

10. In the circumstances and considering the role assigned to the applicant, I am of the considered view that he should be admitted to bail. Hence, following order :

ORDER

I] Criminal application is **allowed**.

II] The applicant – Suresh S/o. Kalidas Mendhe be released on bail in connection with Crime No.1011/2022 registered with Police Station – Hinganghat, District – Wardha, for the offences punishable under Section 307 of the Indian Penal Code, 1860, Sections 4 and 25 of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act, 1951, on he executing PR Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

III] The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned, and shall not, without written permission of the Court, change residence till final disposal of the case.

IV] The applicant shall regularly attend the Court and co-operate to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

V] The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

VI] The applicant shall maintain law and order.

VII] The applicant shall surrender his passport, if any, before the Court within a period of four weeks from today. If he does not possess passport, he shall file affidavit to that effect.

VIII] In case of breach of any condition, the trial Court shall be at liberty to cancel the bail after giving opportunity of hearing to both the sides.

11. The criminal application stands disposed of accordingly.

JUDGE

TAMBE