



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

CRIMINAL APPLICATION (BA) NO.958 OF 2024
(Mohd. Jawed s/o Abdul Wahab Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.S. Mardikar, Sr. Counsel a/b Mr. S.V. Sirpurkar, Advocate for the applicant.
Mr. V.A. Thakare, APP for the State.
Mr. M.V. Rai, Advocate for assist to prosecution.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- FEBRUARY 24, 2025.

By this application, the applicant is seeking bail as he came to be arrested on 18/07/2018 in connection with Crime No.682/2018 registered with Police Station Buldhana, District Buldhana for the offences punishable under Sections 170, 171, 420, 467, 468 and 471 read with Section 34 of the Indian Penal Code.

2. Earlier, the applicant had filed an application bearing Criminal Bail Application No.665/2023 as well as Criminal Bail Application No.597/2024 out of which Criminal Bail Application No.665/2023 is withdrawn whereas Criminal Bail Application No.597/2024 was rejected.

3. The crime is registered on the basis of report lodged by police official Shri D.B.More as he received a complaint of one Suman Shaligram Rajput alleging that the applicant in collaboration with other co-accused

persons purchased an agricultural property belonging to her by preparing forged documents and stamps with an intent to cheat her. On the basis of the said complaint, the police registered the crime against the applicant and other co-accused persons.

4. After completion of the investigation in the crime in question, charge-sheet against the applicant and other co-accused persons was filed. During pendency of the case, accused No.4 applied for tender of pardon and she was accepted as approver. Learned Judge of the trial court recorded entire evidence led by the prosecution and statements of accused persons were recorded. After going through the entire evidence led by the prosecution and accused persons, learned Magistrate came to a conclusion that an offence is made out under Section 469 of the Indian Penal Code which is punishable with life imprisonment and minimum punishment provided is for a term of ten years. It is further observed by learned Magistrate that in view of Section 323 of the Code of Criminal Procedure, he is empowered only to impose punishment for a term of seven years and, therefore, committed the case to the court of sessions by forming an opinion over punishment.

5. The order passed by the Magistrate is challenged by filing the Criminal Application (APL) No.911/2024 wherein the stay was granted to the further proceedings of the criminal case bearing RCC No.224/2018.

6. Learned Senior Counsel for the applicant submitted that from the date of arrest, the applicant is behind bar. The punishment provided for the offences under Section 420, 468 and 471 is upto 7 years. The applicant has undergone maximum punishment as an under-trial prisoner. Now, learned Magistrate committed the case to the Court of Sessions without recording of finding that the applicant is guilty of the offence punishable under Section 467 and 469 of the IPC. Now, the said order is already challenged by the applicant in Criminal Application (APL) No.911/2024 and this Court has granted stay to the further proceedings of the said criminal case, and therefore, the applicant is behind bar. The applicant cannot be kept behind the bars for an indefinite period of time.

7. Learned Senior Counsel for the applicant also submitted that there is inordinate delay in disposal of the case. He further submitted that as the case is not disposed of at the earliest, and therefore, the right of the present applicant of a speedy trial enshrined under Article 21 of the Constitution of India is affected. In view of that, he be released on bail.

8. Learned Additional Public Prosecutor for the State submitted that the trial Court after recording the evidence come to the conclusion that the involvement of the present applicant reveals under Section 467 and 469

of the IPC, and therefore, the case is committed to the court of sessions. As the said order was challenged by the applicant in the Criminal Application (APL) No.911/2024, and therefore, the trial is held up. It is not the prosecution who conducted the trial or there is any lacking on the part of the prosecution to proceed with the trial. In view of that, the application deserves to be rejected.

9. As far as the factual condition or the circumstances are concerned it reveals that the applicant was charged for the offence punishable under Section 420, 468 and 471 of the IPC. On perusal of the order passed by the learned Magistrate it reveals that with the help of Section 323 and 325 of the Cr.P.C., the Magistrate has passed an order and committed the case to the court of sessions. The legality of the said order is already challenged before this Court in Criminal Application (APL) No.911/2024 which is pending.

10. There is no dispute as far as the incarceration of the present applicant is concerned. He is arrested on 18/07/2018 and since then he is in jail. There is no dispute as far as legal provisions are concerned that right to life and personal liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21, and 22 of the Constitution of India. Any attempt to encroach upon the fundamental right has been frowned upon by the Honourable Apex Court in catena of decisions. In the said decisions, the Honourable Apex Court referred

observations of its earlier decision in the case of ***Roy V.D. vs. State of Kerala, [2022 SCC OnLine]*** and observed that the life and liberty of an individual is so sacrosanct that it cannot be allowed to be interfered with except under the authority of law. It is a principle which has been recognised and applied in all civilized countries. In our Constitution, Article 21 guarantees protection of life and personal liberty not only to citizens of India but also to aliens.

11. Thus, the Honourable Apex Court considered that on account of a long period of incarceration and the trial even not being commenced, the appellant has been deprived of his right to speedy trial and released him on bail. There is no dispute that bail is a rule and jail is an exception and the applicant cannot be kept behind the bar by way of punishment. At the same time, gravity of offences need to be looked into.

12. As far as present applicant is concerned there is no dispute that in all 34 offences registered against him and out of that 4 offences are similar in nature. As far as the case before the court below is concerned, admittedly at the fag end it was committed to the court of sessions and now it is stayed as the said order is under challenge. The legality of the order passed by the Magistrate is to be examined in the said application. Admittedly, the applicant cannot be kept behind bar for an indefinite period. He is behind bar approximately for eight years. In

view of the observation of the Hon'ble Apex Court in catena of decisions wherein the Hon'ble Apex Court held that the right of speedy trial is enshrined under Article 21 of the Constitution and if that right is affected irrespective of the offences, the applicant shall be released on bail. In view of the abovesaid observation the application deserves to be allowed. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) The applicant – Mohd. Jawed s/o Abdul Wahab in connection with Crime No.682/2018 registered with Police Station Buldhana, District Buldhana for the offences punishable under Sections 170, 171, 420, 467, 468 and 471 read with Section 34 of the Indian Penal Code, be released on bail on executing P.R. bond of Rs.50,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the concerned police station once in a week i.e. on every Monday between 10.00 AM and 1.00 PM, till disposal of the trial and the concerned Police Officer shall record his presence. The applicant shall cooperate with the investigating agency.

(iv) The applicant shall not leave the jurisdiction of Buldhana district without prior permission of the Court.

(v) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case, either physically or through electronic media.

(vi) The applicant shall attend the proceedings before the Court regularly without seeking any exemption unless there are exceptional circumstances.

(vii) The applicant shall furnish his address with address proof along with the names of his two relatives and their address with address proof before the investigating agency.

(viii) The applicant shall also furnish his cell phone number and surrender his passport, if he is having, before the Court.

13. The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)