



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

CRIMINAL APPLICATION (BA) NO. 1060 OF 2024

(Nishedh s/o Mahadeo Wasnik 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 orders.

Mr. S.P. Dharmadhikari, Senior Counsel with Mr. N.B. Rathod,
Counsel for the applicant.
Ms Mrunal Naik, A.P.P. for the non-applicant/State.

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CORAM : ANIL L. PANSARE, J.
JANUARY 8, 2025

On 10/12/2024, following order was
passed :

"Heard for some time.

*While dismissing earlier application, this
Court had passed following order.*

*"After having heard the application at
length, when this Court was not inclined to
grant relief, the learned counsel for the
applicant, on instructions from the wife of the
applicant, seeks permission to withdraw the
application with liberty to approach this Court
after six months, if the trial is not commenced.*

*2. To my mind, liberty to withdraw the
application can be granted. However, I am not
inclined to expedite the trial nor am I inclined
to grant liberty to approach this Court afresh
after six months. The purpose will be served if
the application is allowed to be withdrawn in
following terms.*

ORDER

*(i) The application is allowed to be
withdrawn with liberty to the applicant to
approach the trial Court afresh once material
witnesses are examined in the trial.*

*(ii) The list of ten material witnesses shall
be furnished to the trial Court by the
prosecution immediately after framing the
charges and those witnesses shall be examined
as expeditiously as possible.*

(iii) The applicant is at liberty to make request to the trial Court for expeditious disposal of the trial. If the request is so made, it shall be considered by the trial Court, considering its docket.

(iv) The copy of the order shall be placed before the learned trial Court, who shall take note of the aforesaid facts and shall note the same in the roznama."

The applicant shall place on record the application made by him to expedite the trial and the order passed thereon by the trial Court.

The trial Court shall file report of the status of the trial and the time that will be required to complete the same.

Copy of this order be forthwith served on trial Court.

List on 19-12-2024.

Learned Additional Public Prosecutor shall file reply by that time, failing which, the application shall proceed without reply.

The Investigating Officer to remain present on next date."

2] As could be seen, the application was allowed to be withdrawn with liberty to approach the trial Court afresh once material witnesses are examined.

3] It's been about two years since then that the charge has been not framed, forget examining any witness. The reason put forth by the Court is that accused persons are not co-operating.

4] The learned Additional Sessions Judge has mentioned in his report that the applicant made an application to frame charge but his relatives, viz., wife and father, who are co-accused, have sought time to engage Advocate and made a request to not frame charge till they engage Advocate.

5] If such was the situation, the learned Judge, after giving opportunity to engage Advocate of the choice of co-accused, could have, rather ought to have, appointed Advocate from Legal Aid Panel to ensure that opportunity of fair trial is given and, thereafter, framed charges. In other words, there are remedies available to deal with the tactics, if any, adopted by the accused to protract the trial. The Court has to be in command of the proceedings.

6] Be that as it may, the applicant is in jail for about three years. He was arrested on 19/2/2022. He is facing trial for the offences punishable under Sections 406, 409, 420, 120B and 212 of the Indian Penal Code, 1860 (for short "IPC"), Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short "MPID Act"), Section 66D of the Information Technology Act, 2000 (for short "IT Act"), Sections 58B and 5A of the Reserve Bank of India Act, 1934 (for short "RBI Act"), Sections 3 and 25 of the Arms Act, 1959 (for short "Arms Act"), and Sections 3(1)(ii), 3(2), 3(4) and 4 of the Maharashtra Control of Organised Crime Act, 1999 (for short "MCOC Act").

7] The accusation against the applicant is that he has created fake websites and lured persons to invest in cryptocurrency, and after receiving investments of about Rs.4 crore, he has allegedly shut down all the websites.

8] The question is, how long should a person, like the applicant, be kept behind bars without trial. The Hon'ble Supreme Court in the case of *Union of India Vs. K.A. Najeed* [(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.”

9] 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.

10] 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.

11] In the present case, even charges are not framed. The applicant is behind bars for about three years. I am informed that there are 204 witnesses cited by the prosecution. It would, thus, take substantial time to commence and complete the trial.

12] In the circumstances and considering the role assigned to the applicant, I am of the considered view that he can be admitted to bail.

13] As such, the learned A.P.P. opposed the application on the ground that the applicant is the mastermind in the offence. However, that by itself cannot be a ground to compromise the liberty of the applicant as enshrined under Article 21 of the Constitution of India. Hence, following order :

ORDER

- I] Criminal application is allowed.
- II] The applicant – Nishedh s/o Mahadeo Wasnik be released on bail in connection with Crime No. 288/2021 registered with Police Station – Yashodhara Nagar, District – Nagpur, for the offences punishable under Sections 406, 409, 420, 120B and 212 of the IPC, Sections 3 and 4 of the MPID Act, Section 66D of IT Act, Sections 58B and 5A of the RBI Act, Sections 3 and 25 of the Arms Act, and Sections 3(1)(ii), 3(2), 3(4) and 4 of the MCOC Act, on he executing PR Bond in the sum of Rs. 50,000/- 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.

14] The criminal application stands disposed of accordingly.

(ANIL L. PANSARE, J.)

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