IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2246 OF 2024

Mohammad Khalid Mukhtar Ahmed Shaikh .. Applicant
Versus
The State of Maharashtra .. Respondent

WITH
INTERIM APPLICATION NO. 4647 OF 2024
WITH
INTERIM APPLICATION NO. 3057 OF 2024
IN
CRIMINAL BAIL APPLICATION NO. 2246 OF 2024

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- Mr. Niranjan Mundargi a/w. Mr. Pandit Kasar and Mr. Afaque Shaikh, Advocates for Applicant.
- Ms. Savita M. Yadav, APP for Respondent – State.
- Mr. Rajendra Rathod a/w. Mr. Umar Dalvi, Mr. Sohail Ahmed, Mr. Ali Bubere, Mr. Abdullah Maknojia, Mr. Mujtaba Shaikh, Mr. Zeeshan Sardar, Mr. Dhruv Jain and Mr. Mudassir Ansari, Advocates for Intervenor.
- Mr. Ravindra B. Patil, Unit No.2, Bhiwandi Crime Branch present.

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CORAM : MILIND N. JADHAV, J.
DATE : FEBRUARY 07, 2025.

JUDGMENT:-

1. Heard Mr. Mundargi, learned Advocate for Applicant, Ms. Yadav, learned APP for State and Mr. Rathod, learned Advocate for Intervenor.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R. No.312 of 2020 registered with Bhiwandi City Police Station for

offences under Section 364-A, 384, 385, 386 and 387 of the Indian Penal Code, 1860 readwith Section 3 and 25 of the Arms Act. There are in all five Accused in the matter. Applicant before me is Accused No.1 and has been incarcerated since 25.09.2020 i.e. for 4 years 4 months and 14 days.

3. Briefly stated the aforesaid crime was registered pursuant to the First Information Report (FIR) lodged by first informant Takweem @ Guttu Ajaz Khan. The first informant is engaged in construction business being run under the name Razi Constructions. In the year 2014, the first informant had undertaken redevelopment of one Rangadi Building at Bhiwandi, during which time present Applicant was the Corporator of Bhiwandi Nizampura Municipal Corporation. It is stated by the first informant that Applicant called him to his office and instructed to give him 20% of the profit towards protection money to ensure that the construction work carried out by him was not obstructed. There was an altercation and scuffle between the first informant and Applicant when he refused to pay the money.

3.1. It is stated by first informant that in January 2015 the Officers of the Municipal Corporation visited the construction site and stopped the construction work though he had requisite sanctions and approvals. The first informant learnt that the Applicant through one Javed Naeem Khan lodged a complaint in respect of the said

construction work and about 15 to 20 days thereafter, Accused Nos.2 and 3 visited the construction site and told first informant that Applicant will not stall the construction work if he settles the matter with him. First informant refused to meet the Applicant and hence these two Accused once again approached the first informant and told him that they could arrange a meeting with the Applicant. Accordingly first informant met Applicant in Hotel Dariya Sagar and the first informant has alleged that Applicant demanded Rs.4,00,000/- per slab. It is stated that first informant was told that the money would reach the gangsters and in the event he fails to pay the amount, the construction would be embroiled in civil litigation and he would not be able to complete the construction. The first informant has alleged that he was scared as he had already entered into the agreements with the occupants of the building and had to complete the construction within time and therefore agreed to pay Rs.4,00,000/- per slab to Applicant towards protection money and paid the same.

3.2. Next it is stated by first informant that the Applicant used to organize Cricket Tournaments in his constituency and in the year 2015, Applicant compelled the first informant to pay Rs.1,75,000/- for the uniform of cricket teams and in the year 2016, he was made to purchase Hero Honda motor cycle worth Rs.60,000/- which was to be awarded as prize to the best player.

3.3. The first informant has stated that he did not lodge a complaint against the Applicant because of his political position and association with gangsters and also as he learnt that Applicant used to extort money from the builders who started new construction in Bhiwandi and used to file Petitions before the High Court through his associates to stall such constructions.

3.4. Next it is alleged that in the year 2017, Accused No.4 who was brother of present Applicant was released from jail and he came to the construction site to collect the extortion amount and when the complainant refused to pay the money, he showed his mobile having photograph of Munna Bhai Bajrangi who was stated to be a gangster and told him that he had to send the money to Munna Bhai Bajrangi and in case he failed to give the money, they would ensure that the building was demolished. Hence complainant under fear paid him Rs.1,50,000/-, however when he was unable to pay him money in July 2016, Accused No.4 threatened him and demanded Rs.4,00,000/- and on failure to give the money threatened to get the building demolished through the Corporation. First informant has alleged that the Applicant alongwith Accused No.4 used to constantly threaten him and extort money in the name of the gangster Munna Bhai Bajrangi and he paid total Rs.8,00,000/- to Applicant in July 2017 at his house.

3.5. Next it is stated that first informant in 2018 started construction of Mehboob Manzil building and the present Applicant once again demanded extortion amount which was paid by the first informant. First informant has stated that the Applicant also took forcible possession of two rooms in the said building.

3.6. In 2019 present Applicant was the candidate of MIM party for Assembly Election, first informant has alleged that while he was in Bhiwandi, Accused No.4 compelled him to sit as a pillion rider on his motor cycle under the threat of causing his death by pointing a gun towards him took him to the house of Applicant and Applicant demanded down payment of an amount of Rs.50,00,000/- from him. It is stated that when he expressed his inability to pay the said amount, Applicant demanded Rs.5,00,000/- for election expenses and when first informant informed the Applicant that he was unable to pay the demanded amount, Applicant threatened him and stated that he knew how to recover the money and that he would recover the same. He also threatened first informant to canvass for him if he wanted to stay in Bhiwandi and first informant agreed to the same but after his release did not canvass for Applicant and left Bhiwandi as he was scared for his life.

3.7. It is stated by first informant that ultimately on 10.08.2020 he gathered courage and filed a complaint against Applicant and his

aides and for collecting evidence against them he started recording their phone calls. It is alleged that on 29.08.2020, he paid Rs.10,000/- to Accused No.2. It is alleged by first informant that at intermittent intervals he has paid money to the Applicant and his aides and on 24.09.2020 Applicant and his brother Accused No.4 again approached him and demanded Rs.2,00,000/-. Thereafter first informant approached the Crime Branch on 24.09.2020 and at 23:00 hours on the same date the Crime Branch laid a trap and present Applicant alongwith co-accused were accosted red handed accepting the said amount.

4. Mr. Mundargi, learned Advocate appearing for Applicant has at the outset fairly pointed out that this is the fourth Bail Application filed by the present Applicant. He would submit that his previous two Bail Applications were rejected by this Court (Coram: Anuja Prabhudesai, J.) by orders dated 27.04.2022 and 25.08.2022 and the third Application was withdrawn. He would submit that Accused No.4 (brother of present Applicant) expired in custody and the other Co-accused viz. Accused Nos.2, 3 and 5 have been granted bail by the Sessions Court.

4.1. He would submit that there is an inordinate delay of almost six years from the first incident in reporting the crime and also almost one year from the alleged incident of kidnapping in 2019. He would

submit that there is no direct evidence against Applicant for his involvement in the present offence. He would submit that Applicant has no link whatsoever to gangster Munna Bajrangi. He would submit that the gun with which the first informant was threatened when he alleged to have been kidnapped was infact a plastic pistol and was recovered from Accused No.4. He would submit that there is no recovery or discovery remaining from the present Applicant.

4.2. Next, he would argue that during the raid on 24.09.2020, first informant was holding a recorder in his hands and the prosecution also collected the DVR hard disk and memory card which was sent to the Directorate of Forensic Laboratory for examination and the Laboratory vide report dated 25.05.2023 has concluded that no data was recovered from the said recorder, DVR hard disk and memory card and hence he would submit that the same casts a shadow of doubt on the genuineness of the prosecution case.

4.3. With respect to Applicant's antecedents, Mr. Mundargi would submit that Applicant is a politician and the cases against him are nothing but a result of political rivalry. He has also raised the defence of non-compliance of procedure laid down under Section 50 of the Code of Criminal Procedure, 1973. He would submit that this Court may consider the long incarceration of the present Applicant of 4 years 4 months and 14 days coupled with the snail pace of the trial which

hinders with the Applicant's right to speedy trial. He would submit that the trial before the Sessions Court has not commenced and till date charges have not been framed. Considering his above submissions, Mr. Mundargi would urge the Court to enlarge the Applicant on bail on terms and conditions as deemed fit by the Court.

5. Ms. Yadav, learned APP appearing for the State has vehemently opposed the present Bail Application and would submit that there are around 20 antecedents to the discredit of the Applicant and that if released on bail there is likelihood that Applicant may re-offend and commit similar crimes. She would argue the offence committed by the Applicant is a serious offence and there is every likelihood that on release on bail Applicant being an influential political person would influence the witnesses and tamper with evidence. She would submit that this is the 4th Application filed by Applicant before this Court and there is no new or changed circumstance in the present case necessitating filing of the present Application. She would submit that delay in the trial is at instance of the Accused in the case and not owing to the prosecution and has placed before me copy of roznama of the Sessions Case. Hence she would urge the Court to reject the present Application.

6. I have permitted Mr. Rathod, learned Advocate for Intervener – first informant to address the Court. He would in addition

to the submissions made by Ms. Yadav submit that considering the serious allegations against Applicant and his influential position in the society there is a threat to the life of first informant if he is released on bail. He would submit that Applicant before the Court is a history-sheeter having been accused in serious crimes and having criminal antecedents and uses same *modus operandi* of filing bogus complaints and leveling false allegations against builders and extorts monies from them. He would vehemently submit that considering the Applicant's antecedents this Court should be cautious in enlarging him on bail as there is every chance that he will tamper with evidence and attempt to influence the witnesses in the case due to his influential political position. He would persuade the Court to consider the fact that this Court has twice in the past rejected the Bail Application of the Applicant; the Supreme Court has rejected his Bail Application; Applicant has approached this Court previously and withdrawn his Bail Application to approach the Sessions Court and after doing so the Sessions Court has rejected his Bail Application. He would submit that therefore Applicant is before this Court. He would submit that all Courts have on merits previously opined that allegations against Applicant are extremely serious and therefore he does not deserve discretion of this Court as there is no change in circumstances to entitle the Applicant to maintain the present Bail Application. In support of his submissions he has referred to and relied upon the decisions of the

Supreme Court in the case of ***Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and Anr.***[1] and ***Virupakshappa Gouda and Anr. Vs. State of Karnataka and Anr.***[2] to contend that if a litigant is to make several Bail Applications on the same ground without any new factor having arisen after the first Bail Application was rejected especially in a serious crime then the Court should be loathe in considering exercise of its jurisdiction to enlarge the accused on bail. He would submit that it is absolute impropriety if the Applicant maintains subsequent Bail Applications on the same grounds again and again on the same cause of action despite facing rejection on merits. He has persuaded me to consider paragraph No.6 of the decision in the case of ***Shahzad Hasan Khan*** *(supra)* and paragraph Nos.12 and 19 of ***Virupakshappa Gouda and Anr.*** *(supra)* to oppose the Bail Application. For reference paragraph Nos.6; 12 and 19 referred to herein above are reproduced below:-

> "***6.*** *As regards merits, for granting the bail, the learned Judge appears to be influenced by two factors, firstly, he observed that the trial could not be commenced or completed as directed by Justice D.N. Jha by his order dated December 10, 1985. In this respect the complainant has filed a detailed affidavit giving the details of the proceedings before the trial court. On a perusal of the same it is evident that the accused persons obtained adjournment after adjournment on one pretext or the other and they did not allow the court to proceed with the trial. On June 7, 1986 complainant's counsel had filed a written application seeking three days time to file counter-affidavit giving the details of the proceedings pending before the trial court. We are constrained to observe that Justice D.S. Bajpai refused to grant the prayer and proceeded to grant bail simply on the ground that the liberty of a citizen was involved which is the case in*

1 (1987) 2 SCC 684
2 (2017) 5 SCC 406

every criminal case more particularly in a murder case where a citizen who let alone losing liberty has lost his very life. Another ground for granting bail was that trial was delayed, therefore the accused was entitled to bail. This also cannot be helped if a litigant is encouraged to make half a dozen applications on the same point without any new factor having arisen after the first was rejected. Had the learned Judge granted time to the complainant for filing counter-affidavit, correct facts would have been placed before the court and it could have been pointed out that apart from the inherent danger of tampering with or intimidating witnesses and aborting the case, there was also the danger to the life of the main witnesses or to the life of the accused being endangered as experience of life has shown to the members of the profession and the judiciary, and in that event, the learned Judge would have been in a better position to ascertain facts to act judiciously. No doubt liberty of a citizen must be zealously safeguarded by court, nonetheless when a person is accused of a serious offence like murder and his successive bail applications are rejected on merit there being prima facie material, the prosecution is entitled to place correct facts before the court. Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution. Learned Judge was unduly influenced by the concept of liberty, disregarding the facts of the case."

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"***12.*** *On a perusal of the order passed by the learned trial Judge, we find that he has been swayed by the factum that when a charge-sheet is filed it amounts to change of circumstance. Needless to say, filing of the charge-sheet does not in any manner lessen the allegations made by the prosecution. On the contrary, filing of the charge-sheet establishes that after due investigation the investigating agency, having found materials, has placed the charge-sheet for trial of the accused persons. As is further demonstrable, the learned trial Judge has remained absolutely oblivious of the fact that the appellants had moved the special leave petition before this Court for grant of bail and the same was not entertained. Be it noted, the second bail application was filed before the Principal Sessions Judge after filing of the charge-sheet which was challenged in the High Court and that had travelled to this Court. These facts, unfortunately, have not been taken note of by the learned trial Judge. He has been swayed by the observations made in Siddharam Satlingappa Mhetre [Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] , especially in para 86, the*

relevant part of which reads thus : (SCC p. 729)

> *"86. … The courts considering the bail application should try to maintain fine balance between the societal interest vis-à-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent court."*
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> *……*
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> ***19.*** *In the instant case, as is demonstrable, the learned trial Judge has not been guided by the established parameters for grant of bail. He has not kept himself alive to the fact that twice the bail applications had been rejected and the matter had travelled to this Court. Once this Court has declined to enlarge the appellants on bail, endeavours to project same factual score should not have been allowed. It is absolute impropriety and that impropriety calls for axing of the order."*

7. It is settled law that a Court while deciding a Bail Application 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 are required to be considered in such cases.

8. 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?"***

9. Argued before me is a case concerning liberty of an under-trial who has been incarcerated for 4 years 4 months and 14 days years, a situation impacting the rights of under-trials 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 accused persons to better prepare their defence.

10. In the case of ***Emperor Vs. H.L. Hutchinson***[3]***,*** 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

3 AIR 1931 ALL 356

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 Mukherjea 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."*

11. In the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation***[4], in paragraph Nos.6 to 15 the Supreme Court considered the prevailing situation of prisons in India, definition of trial and bail, principle of presumption of innocence and reiterated the well recognised principle that bail is the rule and jail is the exception in bail jurisprudence on the touchstone of Article 21 of the Constitution of India. Paragraph Nos.6 to 15 of the said judgement read as under:-

4 (2022) 10 SCC 51

"Prevailing situation

6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.

Definition of trial

7. The word "trial" is not explained and defined under the Code. An extended meaning has to be given to this word for the purpose of enlargement on bail to include, the stage of investigation and thereafter. Primary considerations would obviously be different between these two stages. In the former stage, an arrest followed by a police custody may be warranted for a thorough investigation, while in the latter what matters substantially is the proceedings before the court in the form of a trial. If we keep the above distinction in mind, the consequence to be drawn is for a more favourable consideration towards enlargement when investigation is completed, of course, among other factors.

8. Similarly, an appeal or revision shall also be construed as a facet of trial when it comes to the consideration of bail on suspension of sentence.

Definition of bail

9. The term "bail" has not been defined in the Code, though is used very often. A bail is nothing but a surety inclusive of a personal bond from the accused. It means the release of an accused person either by the orders of the court or by the police or by the investigating agency.

10. It is a set of pre-trial restrictions imposed on a suspect while enabling any interference in the judicial process. Thus, it is a conditional release on the solemn undertaking by the suspect that he would cooperate both with the investigation and the trial. The word "bail" has been defined in Black's Law Dictionary, 9th Edn., p. 160 as:

"A security such as cash or a bond; esp., security required by a court for the release of a prisoner who must appear in court at a future time."

11. *Wharton's Law Lexicon, 14th Edn., p. 105 defines "bail" as:*

"to set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and at a place certain, which security is called bail, because the party arrested or imprisoned is delivered into the hands of those who bind themselves or become bail for his due appearance when required, in order that he may be safely protected from prison, to which they have, if they fear his escape, etc. the legal power to deliver him."

Bail is the rule

12. *The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India. This Court in Nikesh Tarachand Shah v. Union of India [Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1 : (2018) 2 SCC (Cri) 302] , held that : (SCC pp. 22-23 & 27, paras 19 & 24)*

"19. In Gurbaksh Singh Sibbia v. State of Punjab [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] , the purpose of granting bail is set out with great felicity as follows : (SCC pp. 586-88, paras 27-30)

'27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra Nath Chakravarti, In re [Nagendra Nath Chakravarti, In re, 1923 SCC OnLine Cal 318 : AIR 1924 Cal 476] , AIR pp. 479-80 that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused 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 withheld as a punishment. In two other cases which, significantly, are the "Meerut Conspiracy cases" observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [K.N. Joglekar v. Emperor, 1931 SCC OnLine All 60 : AIR 1931 All 504] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were

not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard-and-fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. H.L. Hutchinson [Emperor v. H.L. Hutchinson, 1931 SCC OnLine All 14 : AIR 1931 All 356] , AIR p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is 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. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. Coming nearer home, it was observed by Krishna Iyer, J., in Gudikanti Narasimhulu v. Public Prosecutor [Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240 : 1978 SCC (Cri) 115] that : (SCC p. 242, para 1)

> *"1. … the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. … After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law". The last four words of Article 21 are the life of that human right."*

29. In Gurcharan Singh v. State (Delhi Admn.) [Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the Court, that : (SCC p. 129, para 29)

> *"29. … There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail."*
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> *30. In American Jurisprudence (2nd Edn., Vol. 8, p. 806, para 39), it is stated:*
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> *"Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end."*
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> *It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.'*
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> *24. Article 21 is the Ark of the Covenant so far as the Fundamental Rights Chapter of the Constitution is concerned. It deals with nothing less sacrosanct than the rights of life and personal liberty of the citizens of India and other persons. It is the only article in the Fundamental Rights Chapter (along with Article 20) that cannot be suspended even in an emergency [see Article 359(1) of the Constitution]. At present, Article 21 is the repository of a vast number of substantive and procedural rights post Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] ."*

13. *Further this Court in Sanjay Chandra v. CBI [Sanjay Chandra v. CBI, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] , has observed that : (SCC p. 52, paras 21-23)*

> *"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the*

principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."

Presumption of innocence

14. *Innocence of a person accused of an offence is presumed through a legal fiction, placing the onus on the prosecution to prove the guilt before the court. Thus, it is for that agency to satisfy the court that the arrest made was warranted and enlargement on bail is to be denied.*

15. *Presumption of innocence has been acknowledged throughout the world. Article 14(2) of the International Covenant on Civil and Political Rights, 1966 and Article 11 of the Universal Declaration of Human Rights, 1948 acknowledge the presumption of innocence, as a cardinal principle of law, until the individual is proven guilty."*

12. The Supreme Court in a landmark decision of 1978 in the case of ***Gudikanti Narasimhulu & Ors. Vs. Public Prosecutor, High Court of Andhra Pradesh***[5] *observed as under:-*

5 1978 (1) SCC 240

> *"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)*

13. Thereafter the Supreme Court in a plethora of judgements have discussed the rights conferred by Article 21 qua grant of bail and that such rights cannot be taken away unless the procedure is reasonable and fair and in cases where there is unreasonable delay in trial it would undoubtedly impact the rights of an undertrial. Some of the important decisions of the Supreme Court and some of the High Courts are discussed herein under:-

13.1. In the landmark judgement of ***Maneka Gandhi Vs. Union of India***[6], the Supreme Court held that the right to life and personal liberty under Article 21 is not limited to mere animal 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.

13.2. In the case of ***Hussainara Khatoon Vs. Home Secy., State of Bihar***[7] the Supreme Court held as under:-

6 1978 (1) SCC 248
7 (1980) 1 SCC 81

> *"Now obviously procedure prescribed by law for depriving a person of liberty cannot "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21."*

13.3. The Supreme Court in the case of ***Shaheen Welfare Association Vs. Union Of India***[8] dealing with a Public Interest Litigation seeking relief for under-trial prisoners charged under the Terrorist and Disruptive Activities (Prevention) Act, 1987 due to gross delay in disposal of cases qua Article 21 of the Constitution of India held as under:-

> *"10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh's case (supra), on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21."*

13.4. The Supreme Court in the case of ***Union of India v. K. A. Najeeb***[9] while commenting upon the possibility of early completion of trial and extended incarceration held as under:-

8 1996 SCC (2) 616
9 Criminal Appeal No. 98 of 2021

> *"18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected."*

14. Applicant in present case has been in custody for 4 years 4 months and 14 days. There is no possibility of the trial commencing in the near future. Detaining an under-trial prisoner for such an extended period further violates his fundamental right to speedy trial flowing from Article 21 of the Constitution. 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.***[10] 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 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*

10 1992 (1) SCC 225

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)*

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 ***Supreme Court Legal Aid Committee (Representing undertrial prisoners) Vs. Union of India***[11], the Supreme Court has held that:-

11 (1995) 4 SCC 695

> *"17. We are conscious of the fact that the menace of drug trafficking has to be controlled by providing stringent punishments and those who indulge in such nefarious activities do not deserve any sympathy. But at the same time we cannot be oblivious to the fact that many innocent persons may also be languishing in jails if we recall to mind the percentage of acquittals. Since harsh punishments have been provided for under the Act, the percentage of disposals on plea of guilt is bound to be small; the State Government should, therefore, have realised the need for setting up sufficient number of Special Courts immediately after the amendment of the Act by Amendment Act 2 of 1989. Even after the Division Bench of the Bombay High Court refused to grant en bloc enlargement on bail on 1-2-1993 in Criminal Application No. 3480 of 1992 and B.D. Criminal No. 565 of 1992, no substantial improvement in the pendency is shown since new cases continue to pour in, and, therefore, a one-time exercise has become imperative to place the system on an even keel. We also recommend to the State Government to set up Review Committees headed by a Judicial Officer, preferably a retired High Court Judge, with one or two other members to review the cases of undertrials who have been in jail for long including those released under this order and to recommend to the State Government which of the cases deserve withdrawal. The State Government can then advise the Public Prosecutor to move the court for withdrawal of such cases. This will not only. help reduce the pendency but will also increase the credibility of the prosecuting agency. After giving effect to this order the Special Court may consider giving priority to cases of those undertrials who continue in jail despite this order on account of their inability to furnish bail."*

17. With the able assistance of learned Advocates I have perused the record of the case. One of the principal reason which persuades me to consider the present Bail Application is the long incarceration of the Applicant without there being any reasonable timeline for completion of the trial. Though Applicant has antecedents whether that would be a factor which would weigh for denying him bail, in my opinion in the facts of the present case borne out from the record, it would not be so. There is one strong reason which impels me to come to this *prima facie* conclusion. The timeline of the crime in question which is narrated

herein above is the reason for the same. First Informant has over a period of 6 years been complicit in his demeanor and dealings with Applicant. The Complaint lodged by him in 2020 itself states so alongwith the reason given by the Complainant therein that he desired to complete his development project which he got completed in the meanwhile. That apart, charge of the first informant regarding kidnapping pertains to an incident more than one year prior to the filing of the Complaint. In respect of that incident the alleged gun that is recovered is admittedly a plastic toy pistol as per the prosecution. Forensic report dated 25.05.2023 given by the Directorate of Forensic Science Laboratories, Santacruz states that no data has been recovered from the I.C. Recorder and there is no data in DVR disk and the memory card which is confiscated and therefore this casts doubt on the prosecution case. The aforesaid reasons coupled with the fact that no charge has been framed till date persuades me to allow the present Application. In such circumstances there is no likelihood of the trial commencing and / or being completed in the foreseeable future. Applicant's right to speedy trial, justice and personal liberty in such circumstances *prima facie* emanating from the record is considered.

18. In view of my above *prima facie* observations, Bail Application is allowed on the following terms and conditions:-

(i) Applicant is directed to be released on bail on

furnishing P.R. Bond of Rs.1,00,000/- (Rs. One Lakh Only) with one or two sureties of the like amount;

(ii) Applicant shall report to the Investigating Officer at Bhiwandi City Police Station, Crime Branch Unit 2, Thane on the first Monday of every month between 9:00 am and 10:00 am for the first six months and thereafter as and when called by the Investigating Officer;

(iii) Applicant is prohibited from entering the jurisdiction of Bhiwandi Taluka and jurisdiction of the Padgha Police Station until completion of the trial in the present case. He is permitted to attend the Trial Court on the scheduled dates of hearing of the present case and on the scheduled dates of hearing in all other cases pending against him in the Court only. If he is required to attend the Police Station in Bhiwandi Taluka or Padgha Police Station in any case pending against him, for that reason, subject to order of the Courts directing him to attend he is permitted to enter Bhiwandi Taluka or jurisdiction of Padgha Police Station. It is directed that once the Court hearing is over or the Police Station visit is over he shall within the next one hour thereafter

leave the jurisdiction of Bhiwandi Taluka and / or Padgha Police Station failing which it shall entitle the prosecution to apply for cancellation of this order;

(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 any of the witnesses or tamper with the evidence in any manner;

(vii) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time, as applicable;

(viii) Applicant shall not in any manner try or attempt to establish contact with the first informant physically and / or by any electronic device or means until completion of the trial and disposal of the present case; and

(ix) Any infraction of the conditions shall entail prosecution to apply for cancellation of bail granted to the Applicant.

19. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall proceed uninfluenced by the present order.

20. Bail Application is allowed and disposed.

21. Interim Application No. 4347 of 2024 and Interim Application No. 3057 of 2024 stand disposed of accordingly.

[MILIND N. JADHAV, J.]

Ajay

AJAY TRAMBAK UGALMUGALE

Digitally signed by AJAY TRAMBAK UGALMUGALE
Date: 2025.02.08 14:11:52 +0530