



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

975 BAIL APPLICATION NO. 953 OF 2024

SUSHIL ASHOK MAGARE
VERSUS
THE STATE OF MAHARASHTRA

Advocate for Applicant : Mr. Siddharth Pimpale a/w Mr.
Prashant Bothre and Amol Waghmare i/b Pan India Legal
Service L. L. P. (Through V. C.)
APP for Respondent/s-State : Ms. P. R. Bharaswadkar.

CORAM : S. G. MEHARE, J.
DATE : 19.07.2024

PER COURT :-

1. Heard the learned counsel for the applicant and learned APP for the respondent-State.
2. The applicant seeks bail in Crime No.286 of 2020, registered with Zilla Peth Police Station, District Jalgaon, for the offences punishable under Sections 353, 307, 120-B, 224, 225, 201 of the IPC and Section 3/25 of the Arms Act.
3. He seeks bail on the ground that since the day of arrest i.e. 01.12.2020 there is absolutely no progress in the trial. To support his contention, he placed on record the copies of the Roznama. He would submit that in view of the recent judgment of the Hon'ble Supreme Court in case of Javed, the

applicant deserves bail. Referring to the Roznamas he vehemently argued that for no reason the trial was not postponed. Most of the time, the applicant was not produced from the jail. He has been languishing in jail for sufficient time.

4. Learned APP would submit that the trial was not protracted deliberately by the State, few accused were not attending the trial. From time to time, the applications were filed and those were dealt with by the Court. Hence, time spent to proceed with the matter. There are eleven accused and they are conducting trial as per their convenience. Hence, the applicant may not be granted bail.

5. The Hon'ble Supreme Court in the recent case of ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and others ; MANU SC 0609 of 2024, decided on 03.07.2024*** has taken a view that while exercising the discretion, the Court should bear in mind, the age of the under trial prisoner, the failure of the prosecution to proceed with the matter, and the probable number of witnesses to be examined. It has been also observed that the settled principle of law that bail is not to be withheld as a punishment. The case of ***Satender Kumar Antil Vs. Central Bureau of Investigation ; (2022) 10 SCC 51*** has also

been referred to in that judgment in which it has been observed that Section 436A (which requires inter alia which requires inter alia the accused to be enlarged on bail if the trial is not concluded specified sufficient periods) would apply to the case governed under NDPS Act. It has been clarified in the case of Satender Kumar (supra) that Section 436-A of the Code of Criminal Procedure would apply to the special Acts also in the absence of any specific provision. In the case of ***Gurbaksh Singh Sibba Vs. State of Punjab ; 1980 2 SCC 565***, it has been observed that the object of bail is to secure the attendance of the accused at the trial, that the proper test is to be applied in the solution of the question whether bail should be granted or refused or 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. Finally, in paragraph No.19, it has been observed that if the State or any prosecuting agency including the Court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then, the State or any other prosecuting agency should not oppose the plea for bail on the ground that crime committee is serious. Article 21 of the Constitution applies in irrespective of the nature of the crime.

6. In view of the ratio laid down by the Hon'ble Supreme Court in the above case, the prosecution would not oppose the bail application on the ground that crime is registered against the applicant is serious. The prosecution should ensure the speedy trial. However, considering the roznamas placed on record, there appears no situation to ensure the speedy trial. He has been languishing in jail for more than three and half years. In the facts and circumstances of the case, the view taken by the Hon'ble Supreme Court in the case of *Javed (cited supra)* is squarely applicable to the case in hand. Therefore, he deserves bail on certain conditions. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant SUSHIL ASHOK MAGARE be released on bail on furnishing PB. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of like amount, on the following conditions :
 - (a) He shall not tamper with the prosecution witnesses.
 - (b) He shall attend the trial on every date.

- (c) He shall not protract the trial as other co-accused are behind bar.
- (d) The prosecution as well as the Court is directed to take the matter on priority since there are other under trial prisoners.
- (e) If the parties would co-operate the Court, the Court shall make an endeavour to dispose of the matter within one year from today.

(S. G. MEHARE, J.)

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vmk/-