

Suresh Kumar Pandiyan Pillai vs The State Of Maharashtra on 22 January, 2024

Author: N.J.Jamadar

Bench: N.J.Jamadar

2024:BHC-AS:3511

3 ba 1427

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1427 OF 2023

Mrityunjay Narayan Das @ Montu @ Bangali ... Applicant
versus
The State of Maharashtra ... Respondent

WITH
BAIL APPLICATION NO.1912 OF 2023

Suresh Kumar Pandiyan Pillai ... Applicant
versus
The State of Maharashtra ... Respondent

WITH
BAIL APPLICATION NO.1980 OF 2023

Ramesh Kitta Pujari ... Applicant
versus
State of Maharashtra ... Respondent

Mr. Hrishikesh Mundargi with Ms. Swarali Joglekar, for Applicant in BA 1427
Mr. Deepak Gautam with Ms. Nandini Vasaikar, Mr. Mandeep Singh for Applicant
BA 1912 of 2023.

Mr. Sandeep R. Karnik, for Applicant in BA 1980 of 2023.

Mrs. Geeta P. Mulekar, APP for State.

Mr. Sudhir Jadhav, PI, AEC, DCB, CID, Mumbai present.

CORAM: N.J.JAMADAR, J.

DATE : 22 JANUARY 2024

ORDER :

1. Heard the learned Counsel for the parties.

2. The applicants who are arraigned in MCOC Special Case No.4 of 2017 for the offences punishable under Sections 120B, 307, 506(2) read with Section 34 of the Indian Penal Code, Sections 3, 25, 27 and 35 of the Arms Act, 1959 and Section 3 ba 1427 of 2023.doc 37(1)(a) read with Section 135 of he

Maharashtra Police Act, 1951, have preferred these applications to enlarge them on bail.

3. Initially C.R.No.3 of 2017 was registered at Vile Parle Police Station on the basis of a report lodged by the first informant who was the Manager of Gazali Hotel. The substance of the report was that on 21 October 2016 while the first informant was at Gazali Hotel, Andheri, Mumbai, a person came to the counter and handed over a card to the informant which contained written note - "Ravi Bhai 00447440190035 call kar nahi to agli bar warning nahi, sidha upar" The said person had allegedly threatened the first informant to apprise the owner of Gazali Hotel by uttering the words "Tere andar ke baap ko dena aur call karne bolna, call nahi kiya to upar bhejunga".

4. The first informant alleged, the said person fired a round from the pistol towards the first informant and, thereafter, fled away along with his associates who were waiting outside the hotel on a motorcycle. The investigation revealed that the persons, who came thereat and attempted to commit extortion and fired at the first informant with intent to commit murder, are the members of the organized crime syndicate, of which Ravi Pujari (accused No.8) is the gang leader. Thus, the provisions contained in the Maharashtra Control of Organized Crime Act, 1999 (MCOCA, 1999) came to be invoked.

5. Mr. Ramesh Kitta Poojari - Accused No.2 (Applicant in BA 1980 of 3 ba 1427 of 2023.doc 2023) came to be arrested on 5 February 2017. Mrityunjay Narayan Das @ Montu @ Bangali - Accused No.3 (Applicant in BA 1427 of 2023) came to be arrested on 5 February 2017 and Suresh Kumar Pandiyan Pillai - Accused No.4 (Applicant in BA 1912 of 2023) came to be arrested on 8 February 2017.

6. At this stage, it may be appropriate to briefly note the role attributed to each of the applicants. M. Das @ Montu - accused No.3 was allegedly the person who had entered into Gazali Hotel, thrown a chit containing note and fired at the first informant. The contents of the message on the chit are allegedly in the hand-writing of the applicant M. Das @ Montu. He had gone to Gazali Hotel along with Mohammad Sabbir - Accused No.5 and fled away after the firing as the pillion rider on the motorcycle driven by Mohammad Sabbir - Accused No.5.

7. Ramesh Kitta Pujari - accused No.2 was allegedly the conspirator and in pursuance of the criminal conspiracy had provided money to the co-accused which was generated by the organized crime syndicate through gang leader and Satishchandra Shetty, the absconding accused. The prosecution alleges, in the month of September 2016, and thereafter, the applicant - Ramesh Pujari had met the co-accused and hatched a conspiracy to execute the plan of extortion.

8. Suresh Kumar Pandiyan Pillai - accused No.4 is alleged to be the co- conspirator. He had procured money from the accused No.1 Suresh Muttiah and Ramesh and hired accused No.3 - M. Das and accused No.5 Mohammad Sabbir to 3 ba 1427 of 2023.doc commit the offences. Sureshkumar - Accused No.4 also had meetings with, and was in touch of, the co-accused to hatch the conspiracy and execute the plan to extort money.

9. The applicants had preferred applications for bail which were rejected by the learned Judge, Special Court, MCOCA. Hence, these applications.

10. The applications are resisted by the Respondent - State by filing affidavits in Reply.

11. I have heard Mr. Hrishikesh Mundargi, learned Counsel for the applicant in BA No.1427 of 2023, Mr. Deepak Gautam, learned Counsel for the Applicant in BA No.1912 of 2023, Mr. Sandeep Karnik, learned Counsel for the Applicant in BA 1980 of 2023 and Mrs. Geeta P. Mulekar, learned APP for the State.

12. Learned Counsel for the applicants had advanced submissions primarily on the ground of long incarceration of the applicants as under-trial prisoners. Though, an endeavour was made to urge that the offences under the Penal Code or Arms Act, or, for that matter, MCOCA, are not prima facie made out, yet the thrust of the submission on behalf of the applicants was on the prolonged period of incarceration without any real prospect of conclusion of the trial as even a single witness has yet not been examined, though charge has been framed on 30 September 2019.

13. Learned Counsel have banked upon an order passed by this Court on 28 February 2023, whereby co-accused Suresh Muttiah Poojari @ Suresh Anna came to 3 ba 1427 of 2023.doc be enlarged on bail on the count of long incarceration. Learned Counsel assert, each of the applicants are also entitled to same dispensation. While releasing the co-accused Suresh Muttiah @ Suresh Anna (BA No.2196 of 2022) this Court in the order dated 28 February 2023, referred to the judgments of the Supreme Court in the case of Union of India V/s. K.A.Najeeb¹ and the orders passed by this Court in National Investigation Agency V/s. Areeb Ejaz Majeed², Sachin Damodar Ekhatpure V/s. The State of Maharashtra³ and observed as under :

"7. In the present case, the prosecution has proposed to examine 100 witnesses. Learned APP states that not all the witnesses will be examined. Nonetheless, it is apparent that a large number of witnesses will have to be examined. The applicant is in custody for more than 6 years. The charge has been framed on 30/09/2019 pursuant to which not a single witness has been examined. It is not as if the applicant is responsible for protracting the trial. There are criminal antecedents reported against the applicant. The C.Rs. were registered in 1983 and 1991 under section 302 of IPC and gold smuggling case. The applicant is acquitted in both cases. In respect of the C.R. which was registered in 2003 under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985, the applicant was convicted for 10 years. He has undergone the conviction. The C.R. No. 06 of 2017 was registered for the offence punishable under sections 307, 120-B of IPC read with 25 of the Arms Act which is pending trial.

8. In the context of MCOC Act, one aspect that needs to be considered is that prior to the registration of the present offence, there was no commonality of the applicant committing any offence with the gang leader. The offence of the year 2017 which is in common with the gang leader 1 (2021) 3 SCC 713 3 Bail application No.2830 of 2022

3 ba 1427 of 2023.doc committed after the registration of the present offence. Another factor which is required to be taken into consideration is that as far as the present offence is concerned, there is no direct role alleged against the applicant. The role is that of a co-conspirator. Therefore, in my opinion, the criminal antecedents should not be an impediment in granting him bail."

14. Learned Counsel for the Applicants submitted that the aforesaid reasons apply with equal force to each of the applicants. In fact, the period of incarceration is now almost seven years.

15. Undoubtedly, the statutory restrictions on the grant of bail in special enactments like MCOCA, 1999, NDPS Act, 1985 and Unlawful Activities Prevention Act, 1967, are to achieve the object of the respective enactments. Having regard to the nature of the offences, the legislature has considered it expedient to put additional restrictions in the matter of grant of bail. There can be no qualm over the fact that the offences being of grave nature, release of the accused therein, is conditioned by the twin satisfaction. However, there is, at the same time, a competing claim of the unjustified denial of personal liberty. These provisions are thus, premised on the justification that the trial in which those provisions apply is also concluded expeditiously.

16. In the case of Shaheen Welfare Association V/s. Union of India and Ors.⁴ the Supreme Court enunciated that the stringent provisions can be justified on the presumption that the trial of the accused will take place without undue delay. The 4 (1996) 2 SCC 616 3 ba 1427 of 2023.doc observations in paragraph No.10 read 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 case⁵, 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."

17. In Union of India V/s. K.A.Najeeb (supra), where the accused was facing trial for the offences punishable under the Unlawful Activities Prevention Act and the rigours of Section 43-D(5) of the said Act, were attracted, the Supreme Court observed as under :

"12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS") which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi)⁶, Babba v/s. State of Maharashtra⁷ and Umarmia v/s. State of Gujarat⁸ enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a 5 (1994) 3 SCC 569 6 (1999) 9 SCC 252 7 (2005) 11 SCC 569 8 (2017) 2 SCC 731 3 ba 1427 of 2023.doc speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v/s. Union of India⁹, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.

17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of 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 Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, 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 UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

18. The Supreme Court has thus enunciated in clear and explicit terms that the rigours of the provisions which restrict the grant of bail will meltdown where there is no likelihood of the trial being completed within a reasonable time and the period of incarceration already undergone has exceeded substantial part of the prescribed 9 (1994) 6 SCC 731 3 ba 1427 of 2023.doc sentence.

19. Reverting to the facts of the case, it is imperative to note that the punishment for the major offence punishable under Section 307 of IPC, in the absence of any hurt having been caused to any person, may extend to imprisonment for 10 years. The applicants are in custody for almost 7 years. The offences punishable under Sections 3(1)(ii), 3(2) and 3(4) of the MCOCA, 1999, entail punishment of imprisonment which shall not be less than five years but which may extend to imprisonment for life. The period of incarceration of each of the applicants exceeds the minimum sentence prescribed under each of the aforesaid sections.

20. I find substance in the submission on behalf of the Applicants that since not a single witness has yet been examined, it is unlikely that the trial can be concluded within a reasonable period.

21. Learned APP made an endeavour to urge that non co-operation by the accused has also been contributing to the delay in the conclusion of the trial.

22. Prima facie, copies of the Roznama of the proceedings do not indicate that the applicants are solely responsible for the protraction of the trial. In any event, the period of incarceration of the applicants is such that their claim cannot be contested on the ground that they have also contributed for the delay in the disposal of the cases.

23. On the aspect of parity, it is necessary to note the Applicants - Ramesh 3 ba 1427 of 2023.doc Pujari and Sureshkumar Pandiyan Pillai have been roped in as the co-conspirators.

Suresh Muttiah @ Suresh Anna - Accused No.1, who has been released on bail by a order dated 28 February 2023, was also attributed the role of co-conspirator. The court recorded that in that view of the matter, the criminal antecedents of the said applicant should not be an impediment in granting bail to him.

24. Indeed, there are antecedents of the applicants. Accused No.2 Ramesh Pujari is stated to be involved in 7 cases. He has been convicted in one case and acquitted in three cases. Three cases are pending trial. Applicant/accused No.4 -

Sureshkumar Pandiyan Pillai is also involved in 8 cases and he has been convicted in three cases and four cases are pending trial and in one case he has been acquitted. The applicant/accused No.3 - Mrityunjay Narayan Das @ Montu @ Bangali, is stated to be involved in three cases and has been acquitted in one and two cases are pending trial.

25. The antecedents of the applicants put the Court on guard. It would, therefore, be expedient to impose stringent conditions while directing the release of the applicants on bail.

26. Hence, the following order :

ORDER

(i) The Applications stand allowed.

(ii) The Applicants - Mrityunjay Narayan Das @ Montu @ Bangali, Suresh Kumar Pandiyan Pillai and Ramesh Kitta Pujari be released on bail in MCOCA Special 3 ba

1427 of 2023.doc Case No.4 of 2017 in connection with C.R.No.3 of 2017 registered with D.C.B. C.I.D. Anti-Extortion Cell, Mumbai, (C.R.No.349 of 2016 registered with Vile Parle Police Station), on furnishing P.R. bond of Rs.1,00,000/- with one or more sureties in the like amount, each.

(iii) On being released on bail, the applicants shall not enter Mumbai, Mumbai Suburban District and Thane District, except for the purpose of attending trial and reporting to the Investigating Officer.

(iv) The applicants shall report to the D.C.B. C.I.D. Anti Extortion Cell, Mumbai, every month i.e. on first Monday between 11.00 a.m. to 1.00 p.m.

(v) The applicants shall furnish their contact details and residential addresses to the D.C.B. C.I.D. Anti-Extortion Cell, Mumbai, while residing outside Mumbai, Mumbai Suburban and Thane Districts and shall keep them updated in case there is any change.

(vi) The applicants shall report to the jurisdictional police station where the applicants would reside, on every alternate Sunday in between 11.00 a.m. to 1.00 p.m.

(vii) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing the facts to court or any police officer. The applicants shall not tamper with evidence.

(viii) The applicants shall regularly attend the proceedings before the 3 ba 1427 of 2023.doc jurisdictional Court.

(ix) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Applications disposed.

(N.J.JAMADAR, J.) Signed by: S.S.Phadke Designation: PS To Honourable Judge Date: 24/01/2024 09:43:16