

# Arun Nagnath Fuleboyane vs The State Of Maharashtra on 20 July, 2024

2024:BHC-AUG:14940

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BA-735-24.od

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD  
BAIL APPLICATION NO.735 OF 2024  
WITH BAIL APPLICATION NO.742 OF 2024  
SUDHIR S/O. RAMRAO DEVKATE  
VERSUS  
THE STATE OF MAHARASHTRA

...  
Advocate for Applicant : Mr. S. S. Palnitkar  
APP for Respondent : Mr. S. D. Ghayal

...  
WITH BAIL APPLICATION NO.333 OF 2024  
ARUN S/O. NAGNATH FULEBOYANE  
VERSUS  
THE STATE OF MAHARASHTRA

...  
Advocate for Applicant : Mr. A. D. Ostwal  
APP for Respondent : Mr. S. D. Ghayal

...  
CORAM : S. G. MEHARE, J.  
RESERVED ON : 16-07-2024  
PRONOUNCED ON : 20-07-2024

PER COURT :-

1. Heard the learned counsel for the applicants and the learned A.P.P. for the respondent.
2. All three bail applications are taken up for disposal as arising out of the same cause of action.
3. In Bail Application No.735 of 2024, applicant Sudhir seeks bail in C.R.No.77 of 2023, registered with M.I.D.C. Latur Police Station, District Latur, for the offences punishable under Section 409, 418, 420, 467, 468, 471, 201, 120B of the Indian Penal Code and Section 3 of the Maharashtra Protection Of Interest Of Depositors (MPID) Act, 1999.

4. In Bail Application No.333 of 2024 applicant Arun and in Bail Application No.742 in 2024 applicant Sudhir seek bail in C.R.No.43 of 2023 registered with M.I.D.C. Police Station, Latur for the offences punishable under Sections 420, 465, 467, 468, 469, 471, 474, 477, 477A read with Section 34 of the Indian Penal Code.

5. Learned counsel for the applicant Sudhir has vehemently argued that he was an employee of the firm registered in the name of co-applicant Arun. The main accused has used his bank account to transfer the money. The main accused was withdrawing and operating the bank account in his name. He is not the beneficiary of the so-called defrauded money. He is a poor man. He was getting a small salary. His bank account has been seized. Nothing is recovered from him. Hence, he may be granted bail.

6. The learned counsel for the applicant, Arun has advanced a lengthy argument as if it is a trial. He placed on record the compilation of the roznama of the trial Court to point out the progress in the trial. In brief, he argued that the applicant had no concern with the so-called firms. His elder brother, who is the main accused, was operating the bank account in his name. The material collected on record would reveal that his brother was operating the bank account and dealing with the business of the firms. He did not receive profit. The statement of the Chartered Accountant reveals that the entire account was maintained by his

brother. He submits that the applicant is languishing in jail for more than one year. The chargesheet is running in a thousand pages. A large number of witnesses are listed on the charge sheet. As per the prosecution case, the offence against the applicant is for cheating, punishable under Sections 420 and 120B of the Indian Penal Code. He submits that the maximum punishment for the charges levelled against the applicant is seven years. The trial may take its time. He has furnished the affidavit through his wife that he would not transfer the land standing in his name. Before the offence was registered, to show bona fides he had deposited a huge amount with the office of the main accused.

7. To bolster his arguments, he relied on the case of Javed Gulam Nabi Shaikh vs. State of Maharashtra and another, Criminal Appeal No.2787 of 2024 (Arising out of SLP (Cri) No.3809 of 2004), dated July 3, 2024. He also relied on the case of Satender Kumar Antil vs. Central Bureau of Investigation, (2022) 10 SCC 51 and Gurbaksh Singh v. State of Punjab, (1980) 2 SCC 565.

8. The Learned Prosecutor has opposed the application. Referring to the material from the charge sheet, he has vehemently argued that the prosecution has evidence that the applicant, Arun has used money transferred to his account. It is a big fraud of Crores of Rupees. The Government has been cheated.

His defence is improbable. He had no reason to deposit the money before registering the first information report. He submits that the ratio laid down in the case of Javed Gulam (supra) and other cases he relied upon do not apply to the facts of the case. The accused protracted the trial by filing discharge and bail applications. Though the chargesheet is large, the number of witnesses is moderate. He prayed to dismiss the applications.

9. The defence of the applicant Arun is that there is absolutely no material against him showing that he was in person doing the business. The trial may take its time. However, there is material on record that the amount was transferred to his account and was invested in another firm. It is difficult to accept at this juncture that the applicant has no knowledge of what his brother was doing in his name. The big fraud has been played with the Government. The question is how much time the trial would take. Could the prosecution proceed with the matter, and what time would the prosecution take to complete the trial?

10. Admittedly, there are no antecedents to the discredit of the applicants. Speedy trial is the fundamental right of accused as enshrined under Article 21 of the Constitution of India. Secondly, it is to be considered whether the applicants would flee away from the trial or interfere with the investigation, if any.

11. The papers reveal that the offence is based upon the

documentary evidence. The main accused was public servant. He

was playing fraud with the Government and transferring the money to the account of the firm, which is in the name of applicant Arun. The amounts were also transferred in the name of applicant Sudhir. The investigation reveals that a huge fraud has been played with the Government. The prosecution has expressed an apprehension that if the bail is granted, the misappropriated money, which the investigating officer could not detect, will not be recovered. It's public money. The accused may evade the trial. Recovery of defrauded money is essential.

12. The Honourable Supreme Court, in a case of Ramesh Kumar vs. The State of (NCT of Delhi), 2023 INSC 596, dated 04.07.2023, held that the practice of reducing the process of criminal law into money recovery proceedings is deprecated. It was further held that the process of criminal law could not be utilized for arm-twisting and money recovery, particularly while opposing the prayer for bail. In such circumstances, we have no hesitation in holding that the very condition to get release the petitioner should pay 20% of the cheque amount cannot be sustained.

13. The law is laid down that the Criminal Law would not be used for money recovery, and that may not be a ground to oppose the bail application.

14. Recently, in the case of Javed Gulam (supra), the Honourable Supreme Court granted bail to the accused,

considering that the accused was in jail as an under-trial for the past four years, till the date the trial Court has not been able to even proceed to frame charge and the prosecution intends to examine not less than eighty witnesses. The Honourable Supreme Court further observed in paragraph No.8 that having regard to the aforesaid, we wonder by what period of time the trial will ultimately conclude. Howsoever serious crime may be, an accused has the right to a speedy trial as enshrined under the Constitution of India. The Honourable Supreme Court also discussed the various settled principles of law that bail is not to be withheld as a punishment. The learned Supreme Court has reproduced the observations in Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P., (1978) 1 SCC 240, which reads thus;

"What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said :

"I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial."

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15. In the case of Gurbaksh Singh Sibba (supra), it has been held 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 is indisputable that bail is not withheld as a punishment.

16. In the case of Satender Kumar Antil (supra), the Honourable Supreme Court held that, prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 of N.D.P.S. Act. The Court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973.

17. From the various pronouncements of the Supreme Court, it has been made clear that Section 436A of the Code of Criminal Procedure would apply to the special Acts in the absence of any specific provision.

18. The Honourable Supreme Court, in the case of Javed Gulam (supra) in paragraph 19, has observed thus;

"If the State or any prosecuting agency including the court concerned has no wherewithal to provide or

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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 the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."

19. The compilation submitted by the learned counsel for applicant Arun and the chart of Roznama reveal that many times,

the accused were not produced from jail, and the prosecution even failed to deposit the muddemal property in the Court. There are a large number of witnesses to be examined. It would take a sufficient time. Considering the Roznama, it appears that the Trial Court has not even proceeded with the matter expeditiously. The prosecution has nothing to show that the applicants are likely to flee away and avoid the trial. The applicants have roots in the State. Considering the big chargesheet running thousands of pages, the Court believed that the prosecution could not ensure a speedy trial.

20. The ratio laid down in the case of Javed Gulam (supra) clearly applies to the case at hand. As far as the merits of the case, the investigation has been completed. Nothing is to be recovered from the applicants. Their detention would serve no purpose.

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21. For the above reasons and applying the ratio laid down by the Honourable Supreme Court, in the case of Javed Gulam (supra), the applicants deserve bail. Hence the order:-

#### ORDER

i) Bail applications are allowed.

ii) The applicants - Sudhir s/o. Ramrao Devkate and Arun s/o.

Nagnath Fuleboyane be released on bail, on furnishing PB and SB of Rs.50,000/-, with one solvent surety of the like amount each, in the above crimes for the aforesaid offences, on the conditions that,

(a) They shall attend the trial on each effective date.



(b) They shall not protract the trial.

(c) They should provide their address proofs and cell phone numbers to the Trial Court with an undertaking that they would not change them until the trial is completed.

(d) They should not indulge in similar crimes.

( S. G. MEHARE ) JUDGE rrd