IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.180 OF 2024

Santosh Pralhad Waghmare .. Applicant

Versus

The State of Maharashtra .. Respondent

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- Mr. Veerdhawal Deshmukh, Advocate for Applicant.
- Mr. Sukanta A. Karmakar, APP for Respondent – The State of Maharashtra.
- Mr. Balasaheb Gavhane, PSI, Hill Line Police Station (Mobile No.9821242646).

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 07, 2025

ORAL JUDGEMENT.:

1. Heard Mr. Deshmukh, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent – The State of Maharashtra.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') seeking Bail in connection with C.R. No.76 of 2017 registered with Hill Line Police Station for offences punishable under Sections 302 and 201 of Indian Penal Code, 1860 (for short '**IPC**') and 37(1), 135 of Bombay Police Act, 1951.

3. Applicant is arrested on 26.03.2017. Bail Applications filed by Applicant previously have been rejected. Initially Applicant has filed Bail Application through jail to Court which has remained

pending on the docket of this Court for past one year. Subsequently, since said Bail Application was not heard, Applicant has appointed Mr. Deshmukh to represent and espouse his cause in place of appointed Advocate.

4. There is one message which I want to send across to the appointed Advocates in such matters. Once they are appointed in such matters, it is the duty of appointed Advocates through legal aid, to move the Court and apprise the Court of the Application especially in such long incarceration cases of Accused – under-trial in jail. It is the duty of the appointed Advocate to do so. That is the precise reason as to why appointed Advocates get appointed through the Legal Aid Committee to represent and espouse the cause of under-trials who are languishing in jail for a long time. Nevertheless it is seen that there is an appointment order of the appointed Advocate.

5. Mr. Deshmukh has now been appointed by Applicant to espouse his cause. It is seen that incident occurred on 26.03.2017 between 08:30 a.m and 09:30 a.m in the morning. Applicant before me was acquainted with the victim as both of them were friends. At around 08:30 a.m. he approached the aforesaid victim at his house and called out for him from outside upon which victim came out of the house and went alongwith him as Applicant wanted to discuss certain things with the victim as per prosecution case and as stated in the First

Information Report (for short '**FIR**') by the First Informant who is the wife of the victim. The prosecution case is based on circumstantial evidence on the basis of last seen theory. Thereafter at about 09:30 a.m. one local person called Sonu Dada came to the First Informant and informed her that there was a quarrel which ensued between Applicant and victim while they were walking on the road and that quarrel went on for some time and the victim was lying injured with injuries with wounds inflicted on him on the road. The victim was rushed to the hospital by the First Informant and other neighbours / passers-by and he succumbed to his injuries on the same day. The post-mortem report states that the injured victim suffered one serious wound due to the stab in the chest of the victim by a sharp weapon which was a knife recovered by the prosecution. The other injuries appears to be contused lacerated wounds and abrasions as can be seen from the post-mortem report appended at page No.74 of the charge-sheet compilation which has been placed before the Court by Mr. Deshmukh.

6. Application for regular bail is pressed by Mr. Deshmukh on the ground of long incarceration of Applicant and facet of speedy trial and liberty of Applicant especially in the wake of the trial not having been commenced and no probability of trial been completed in the foreseeable future. It is an appropriate ground which deserves consideration, considering the long incarceration of Applicant.

Needless to state that trial will ultimately determine complicity of Applicant since indictment is on the basis of last seen theory which is purely circumstantial in nature.

7. Applicant was 27 years old at the time of incident. His Application addressed to the Court through jail which is subject matter of present Bail Application states that he has never been produced in Court for more than three years. This is a sorry state of affairs when right to speedy justice is enshrined as a fundamental right as determined by Supreme Court in a series of decisions.

8. Mr. Karmakar, learned APP for Respondent – State of Maharashtra would submit that there is no doubt that the trial has not commenced and it is delayed but Court will take into account gravity of the crime which is one of the essential factor to be considered when Court determines the Bail Application. I have considered the submissions made by Mr. Karmakar and it is seen that this is a case where Applicant and victim were fully acquainted with each other and victim on his volition on being called by Applicant went alongwith him, accompanied him and what happened thereafter is left best to the prosecution to be proven at the trial. Learned APP would submit that the trial has been commenced but he has no other details to inform to the Court.

9. I have heard Mr. Deshmukh, learned Advocate for Applicant

and Mr. Karmakar, learned APP for Respondent – State of Maharashtra. Perused the records of the case. Submissions made by Mr. Deshmukh, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent – State of Maharashtra have received due consideration of this Court.

10. It is seen that Applicant was arrested on 26.03.2017 and is incarcerated for 7 years, 10 months and 12 days. From perusal of record, I am inclined to consider Applicant's case even though it has been opposed by Mr. Karmakar, learned APP considering the gravity of crime in question. The right to bail has been effectively summarised as far back as in the year 1923 in the decision of Calcutta High Court in the case of ***In Re: Nagendra Nath Chakravarti*** [1] by stating that the object of bail is to secure the attendance of the Accused at the trial.

11. It is settled law by a plethora of cases passed by the Supreme Court 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. Though there would be consideration for the other broad parameters like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence which will have to be considered. However juxtaposed that with the fact that almost 7 years of incarceration and trial having not

1 1923 SCC OnLine Cal 318 : 1924 Cri LJ 732 : AIR 1924 Cal 476.

commenced is required to be seen especially when trial has not commenced.

12. Argued before me is the case of the Applicant concerning his right to speedy justice and liberty who is an under-trial having been incarcerated from 7 years, 10 months and 12 days, a situation impacting his right conferred by Article 21 of the Constitution of India to speedy justice as also personal liberty. In so far as the power of High Court to grant bail is concerned, the Allahabad High Court, as far back as in the year 1931 in the famous Meerut Conspiracy case of ***Emperor Vs. H.L. Hutchinson***[2] laid down that when the case involves a question of personal liberty of an under-trial who is incarcerated for a very long period, the powers of the Court are wide and unfettered by the conditions and the principle rule being that bail is the rule and refusal is the exception should be applied. In that said case, it 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. Paragraph No.9 of the aforesaid decision deserves reproduction and reads thus:-

2 AIR 1931 ALL 356.

> *"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."*

13. Very recently in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation***[3], 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:-

> *"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*

3 (2022) 10 SCC 51

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."*

30. In American Jurisprudence (2nd Edn., Vol. 8, p. 806, para 39), it is stated:

> *"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."*
>
> *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.'

* * *

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."*

14. The Supreme Court in a landmark decision of 1978 in the case of ***Gudikanti Narasimhulu & Ors. Vs. Public Prosecutor, High Court of Andhra Pradesh***[4] *observed as under:-*

> *"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)*

15. 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

4 1978 (1) SCC 240

Courts are discussed herein under:-

15.1. In the landmark judgement of ***Maneka Gandhi Vs. Union of India***[5], 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.

15.2. In the case of ***Hussainara Khatoon Vs. Home Secy., State of Bihar***[6] the Supreme Court held as under:-

> *"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."*

15.3. The Supreme Court in the case of ***Shaheen Welfare Association Vs. Union Of India***[7] 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

5 1978 (1) SCC 248
6 (1980) 1 SCC 81
7 1996 SCC (2) 616

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."*

15.4. The Supreme Court in the case of ***Union of India v. K. A. Najeeb***[8] while commenting upon the possibility of early completion of trial and extended incarceration held as under:-

> *"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."*

16. Applicant in present case has been in custody for 7 years, 10 months and 12 days. There is no possibility of the trial being completed 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

8 Criminal Appeal No. 98 of 2021

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.***[9] 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 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)*

17. 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

9 1992 (1) SCC 225

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.

18. This Court (Coram: N.J. Jamadar, J.) in the case of ***Avinash Ashok Torane Vs. The State of Maharashtra***[10] while dealing with a bail application for offence under Section 302 of IPC considering parity with another co-accused who was enlarged on bail considered the unlikelihood of completion of trial coupled with the period of long incarceration of 1 year 3 months of the Applicant and enlarged him on bail.

19. Similarly this Court (Coram: M.S. Karnik, J.) in the case of ***Sonu Parmeshwar Jha Vs. The State of Maharashtra***[11] was dealing with a bail application for offences under Sections 302 and 304(b) of IPC and considering circumstantial evidence against the accused as well as long incarceration of accused of 1 year 7 months enlarged him on bail.

20. In the case of ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Anr.***[12], the Supreme Court while granting bail to accused incarcerated for 4 years in paragraph Nos.16 and 17 held as under:-

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10 Bail Application No.3535 of 2023 decided on 08.01.2024.
11 Bail Application No.4122 of 2021 decided on 18.01.2023
12 (2024) 9 SCC 813

> *"16. Criminals are not born but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.*
>
> *17. 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 the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."*

21. In the case of ***Chintan Vidyasagar Upadhyay Vs. The State of Maharashtra***[13], in a case under Sections 302 and 396 of IPC the Supreme Court granted bail to the accused who had undergone 6 years of pre-trial incarceration. Similarly in the case of ***Indrani Pratim Mukerjea Vs. Central Bureau of Investigation***[14] the Supreme Court in a case under Section 302 of IPC granted bail to the accused, she having undergone pre-trial incarceration of 6 and a half years.

22. This Court in the case of ***Guddu Soubhan Harijan Vs. The State of Maharashtra***[15] dealing with a similar situation considering the long incarceration of the under-trial / Accused therein for 7 years granted him bail in Bail Application No.3470 of 2024 on 06.02.2025.

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13 SLP (Crl.) No.2543 of 2021 decided on 17.09.2021
14 SLP (Crl.) No.1627 of 2022
15 Bail Application No.3470 of 2024 decided on 06.02.2025.

23. In view of my above observations and findings and facet of long incarceration of 7 years, 10 months and 12 days as delineated above and no probability of trial been completed in the foreseeable future, the case of prosecution being based on circumstantial evidence, invoking the right to speedy justice and personal liberty as enshrined in Article 21 of the Constitution of India, the Bail Applications stands allowed subject to following conditions:-

(i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

(ii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 a.m. to 12:00 p.m. for the first three months after release and thereafter as and when called;

(iii) 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;

(iv) Applicant shall not leave the State of Maharashtra

without prior permission of the Trial Court;

(v) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;

(vi) 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;

(vii) Any infraction of the above conditions shall entail cancellation of this order.

24. The aforesaid observations are *prima facie* on the basis of record of the case which have been argued before me and is an expression of opinion by this Court only for the purpose of enlargement of Applicant on bail and shall not influence the trial in the present case.

25. Bail Application stands allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA HANUMANT SAWANT

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