

ORDER BELOW EXH 196 IN NDPS CASE NO. 01/2017

The accused No.3 Kishor Dattatray Surve has filed third application for regular bail under section 439 of the Cr. P.C.

2] The Ld. Advocate for the accused Shri. Salve argued that earlier two bail applications of the accused were rejected on merits. However, this application is filed for bail in view of only one change in circumstances that a period of detention of the accused in jail for more than 5 years has been completed. According to him, the minimum punishment for alleged offence u/s. sec. 22(c), 25 and 29 (1) r/w 8(c) of the NDPS Act is up to 10 years. Therefore, the accused is entitled for bail as per directives in Clause (iii) laid down by the Hon'ble Supreme Court in case of **S.C. Legal Aid Committee Vs. Union of India 1994 SCC (6) 731.**

3] He further submitted that, the provision of Sec. 436-A of the Cr.P.C. and the directions of the Hon'ble Apex Court relating to bail in S.C. Legal Aid Committee (supra) are supplementary to one another. In this regard he has relied upon case of **Sanawar Ali V/s. Union of India**, wherein it is observed by the Hon'ble High Court of Calcutta that, “ We are conscious that delay may also be caused by an accused and it is nobody's case that such a litigant can derive benefit out of his own wrong. However, the principle of apportionment of responsibility in the matter of delay in trial must be counteracted in the backdrop of the constitutional duty of the State to ensure effective and speedy prosecution. The Constitution assures every individual the precious right of personal liberty and when it is forfeited by the State to ensure administration of criminal

justice a heavy corresponding duty is cast on it to ensure speedy conclusion of trial minimizing under trial detention. Directives ***Supreme Court Legal Aid Committee*** (Supra) are to be viewed from such perspective. These directions cannot be whittled down or restricted by the operation of Section 436 A Cr.P.C. The said provision is an expression of similar anxiety of the legislature to minimize under trial detention. The directives of the Apex Court relating to bail and section 436A operate in the same field and are supplementary to one another. To read one in derogative of the other would amount to restricting the right of under-trials to bail in the face of inordinate delay in trials and would frustrate the very spirit of the aforesaid law."

4] He further relied upon cases of Shams Tabrez V/s Unknown in C.R.M. 9337 of 2019 dtd. 01.10.2019 (Calcutta High Court), Ramesh Mahato V/s Unknown in C.R.M. 4139 of 2021 dtd. 18.08.2021 (Calcutta High Court) and Case of Supreme Court Legal Aid V/s Union of India in C.R.M. No. 796 of 2020 dtd. 21.01.2020 (Calcutta High Court), wherein the applicants/accused had completed 5 years in jail and were released on bail by the Hon'ble High Court on the basis of decision of **S.C. Legal Aid Committee (supra)**.

5] On the other hand, Ld. APP Shri. Ghate or any other Special APP on behalf Prosecution did not remain present in this matter in spite of service of notice in the office of Inspector of Custom, Narcotic Cell, Pune Custom Office Sasoon Road, Pune vide Exh.200. No say on behalf of prosecution on bail application is

filed. Since the accused are in Jail, this bail application is taken for final arguments on submissions of Ld. Advocate for the accused.

6] Perused the application and say. I have gone through the above citations. The accused seek bail only on the ground that he has completed 5 years in jail since his arrest. He has relied upon case of S.C. Legal Aid Committee (supra) wherein the Hon'ble Supreme Court has given directives as under :-

We, therefore, direct as under:

(i) Where the under trial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an under trial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the concerned Special Judge with two sureties for like amount.

(ii) Where the under trial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an under trial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs. 50,000 with two sureties for like amount.

(iii) Where the under trial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an under trial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.

(iv) Where an under trial accused is charged for the commission of an offence punishable under Sections 31 and 31A of the Act, such an under trial shall not be entitled to be released on bail by virtue of this order.

The directives in Clauses (i), (ii) and (iii) above shall be subject to the following general conditions:

(i) the under trial accused entitled to be released on bail shall deposit his passport with the learned Judge of the concerned Special Court and if he does not hold a passport he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. In the latter case the learned Special Judge will, if he has reason to doubt the accuracy of the statement, write to the concerned Passport Officer to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said time, the learned Special Judge will be entitled to act on the statement of the under trial accused;

(ii) the under trial accused shall on being released on bail present himself at the police station which has prosecuted him at least once in a month in the case of those covered under Clause (i), once in a fortnight in the case of those covered under Clause (ii) and once in a week in the case of those covered by Clause (iii), unless leave of

absence is obtained in advance from the concerned Special Judge;

(iii) the benefit of the direction in Clauses (ii) and (iii) shall not be available to those accused persons who are, in the opinion of the learned Special Judge, for reasons to be stated in writing, likely to tamper with evidence or influence the prosecution witnesses;

(iv) in the case of under trial accused who are foreigners, the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the country to which the foreigner- accused belongs, that the said accused shall not leave the country and shall appear before the Special Court as and when required;

(v) the under trial accused shall not leave the area in relation to which the Special Court is constituted except with the permission of the learned Special Judge ;

(vi) the under trial accused may furnish bail by depositing cash equal to the bail amount;

(vii) the Special Judge will be at liberty to cancel bail if any of the above conditions are violated or a case for cancellation of bail is otherwise made out; and

(viii) after the release of the under trial accused pursuant to this order, the cases of those under trials who have not been released and are in jail will be accorded priority and the Special Court will proceed with them as provided in Section 309 of the Code.

7] In present case, the accused no. 3 was arrested on 02.08.2016 for the offence having committed under sec. 22(c), 25

and 29 (1) r/w 8(c) of the NDPS Act. Thus the accused no.3 has completed 5 years in jail. The charge-sheet was filed on 27.01.2017. The charge was framed on 19.09.2017. The recording of evidence of the prosecution witness no. 1 i.e. PW1 Complainant was going on since 27.01.2018. It was to be completed within short period. However, since month of March 2020, the Courts were not functioning except urgent cases, due to COVID-19 pandemic, and therefore further progress of the trial of this case was arrested. Now functioning of the regular Court has been commenced since 07.09.2021 and therefore further trial of this case will commence and will be completed near future. In earlier bail applications, this Court has observed that there is prima facie involvement of the accused in alleged offence which is serious in nature. If the accused released on bail, there is every possibility of tampering the prosecution evidence and influencing the prosecution witnesses by the accused. There is also possibility of absconding of the accused. In the facts and circumstances of this case and nature of offence, the accused is not entitled for benefit of directives in case of S.C. Legal Aid Committee (supra) and other cases referred above. Consequently, the accused has no case for bail. Hence the following order is passed.

ORDER

1. Application below Exh.196 is rejected.

Date : 13/01/2022

(Rajendra. V. Lokhande)
Addl. Sessions Judge,
Baramati.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order is same word for word as per original Order.

Name of Steno	:- R.L. Bhunyar (Stenographer Grade-I)		
Court Name	:- Rajendra V. Lokhande Additional Sessions Judge, Baramati.		
Date of Order	:- 13/01/2022		
Order signed by the Presiding Officer	13/01/2022 :-		
Order Uploaded on	:- 13/01/2022		