
(1996) 01 BOM CK 0027

In the Bombay High Court

Case No : Criminal Application No. 8 of 1996

Ibrahim Alias Munna Salim Shaikh

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 09-01-1996

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21
Penal Code, 1860 (IPC) — Section 395

Citation : (1996) CriLJ 1419

Hon'ble Judges : Vishnu Sahai, J

Bench : Single Bench

Advocate : K.M. Sangani, for the Appellant; Mrs. S.G. Pingulkar, App., for the Respondent

Judgement

1. Heard Mr. K. M. Sangani for the applicant and Mrs. S. G. Pingulkar App for State.

2. This is an application for bail in a case u/s 395 I.P.C. It is not disputed by the learned counsel for the parties that the dacoity in question took place on 26th January 1986 and that although the applicant is in jail since 3rd September 1986 his trial has not yet commenced. In other words in spite of the fact that the applicant has been in jail for over 9 years and 4 months his trial has not commenced. This indeed is a shocking state of affairs and a shameful reflection on our judicial system.

3. This inordinate delay in the commencement of the trial of the applicant by itself is a sufficient ground to enlarge the applicant on bail in view of the mandate contained in Article 21 of the Constitution of India.

Article 21 of the Constitution of the India provides that "no person shall be deprived of his life or personal liberty except according to procedure established by law."

4. The expression "procedure established by law" come up for construction

before the Apex Court in a large number of cases but for the purposes of disposal of this bail application it would only be necessary to refer to two of them, namely those reported in :

1. Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, ; and (2) Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., . In both of these cases it has been held that the expression "procedure established by law, used in Article 21 of the Constitution of India does not only can note that the procedure has to be reasonable, fair and just but it also stipulates that it has to be a speedy and expeditious procedure.

In paragraph 5 of Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, the Apex Court has observed thus :

"..... Now obviously procedure prescribed by law for depriving a person of his liberty cannot be "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"

In paragraph 54 of Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., the Apex Court has remarked thus :

"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 social 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."

5. A perusal of the aforesaid two decisions of the Apex Court shows that the right of the accused to a speedy or expeditious trial is a fundamental right.

It is a trite that this Court zealously guards fundamental rights of accused persons also. Merely on account of their involvement in criminal cases their fundamental rights are not frozen. They survive to the extent they are compatible with their detention in jail. On this rationale for example, the fundamental rights conferred by Article 19(1)(c)(d)(e) and (g) namely the right to form associations or unions; to move freely throughout the territory of India; to reside and settle in any part of territory of India; and to practice any profession or to carry on any occupation, trade or business are frozen because their exercise is incompatible with detention of the accused person in jail. However the right guaranteed by Article 21 of the Constitution of India survives because there is no antagonism between its exercise and the detention of an accused person in jail. There can be no dispute that the non-commencement of

the trial of the applicant who has been in jail for over 9 years and 4 months is certainly an infraction of his fundamental right of an expeditious trial implicit in Article 21 of the Constitution.

6. In matters of infringement of fundamental rights this Court takes a very grave and stern view because they are the most cherished rights conferred by our Constitution. This Court will not permit infraction or abridgment of the fundamental right of a speedy or expeditious trial implicit in Article 21 of the Constitution of India unless it can be shown that the accused himself was instrumental for the delay. In that case the principle that the law would not allow a person to take advantage of his own wrong would come into play. This the law would certainly not permit, however, this is certainly not the case here. The learned APP could not show that the inordinate delay in the commencement of the trial of the applicant was on account of laches on the part of the applicant himself.

7. It would be relevant to mention that although Section 395, I.P.C. provides for a maximum sentence of life imprisonment but the judicial practice, normally, is to award a sentence ranging between 7 to 10 years R.I. where an offence has been committed under this Section. Bearing this salutary fact in mind it causes tremendous anguish and concern to this Court that although the applicant has been in jail for over 9 years and 4 months his trial has not yet commenced.

The painful truth is that in sum and substance the applicant has actually served out the sentence which would be awarded to him in case he is convicted. But what if he is acquitted ? The question which perturbs the Court is can the State given him back those nine years and four months for which he has been in jail ? With a heavy heart I say that the answer has to be in the negative. In my view there can be no more glaring case of the infraction of the fundamental right of a speedy and expeditious trial implicit in Article 21 of the Constitution of India than the present one. The least which a Court can and should do is to grant bail to the accused. This is exactly what I propose doing.

8. Mrs. S. G. Pingulkar learned APP vehemently contended that the applicant is a hardened criminal and has been involved in 22 cases. She voiced an apprehension that if released on bail there is every likelihood that he will commit fresh crimes.

9. Criminal history certainly has a very material bearing on the issue whether bail should be granted in a given case or not. However, according to me, it can never be the sole ground for refusing bail in a case; more so, in one where the accused has been in jail for over 9 years and 3 months awaiting trial for no fault of his and there is nothing to indicate that he is previous convict.

10. After balancing all the material considerations I feel that this is an appropriate case in which the applicant should be enlarged on bail, for this Court cannot and should not lightly ignore the infraction of the fundamental right of an expeditious and speedy trial implicit in Article 21 of the Constitution of India. At

the same time to safeguard the apprehension of the learned APP that if enlarged on bail the applicant may commit serious offences, in my view, the bail order should be hemmed by certain stringent safeguards.

Accordingly I direct that the applicant be enlarged on bail on his executing a personal bond of Rs. 10,000/- and two sureties of the like amount to the satisfaction of the Sessions Court, Thane. The bail of the applicant shall be subject to the further condition that every alternate day he would report at Police Station Ambarnath.

11. Order accordingly.

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