IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.479 OF 2021

Shekhar Chandrashekhar … Applicant
Vs.
State of Maharashtra … Respondent

Mr. Vikram Sutaria a/w. Ms. Sharvari Joshi and Ms. Agastya Desai for Applicant.
Mr. Mayur S. Sonavane, APP for Respondent-State.

CORAM : MANISH PITALE, J.
DATE : JULY 04, 2024

P.C. :

. Heard Mr. Sutaria, learned counsel for the applicant and Mr.Sonavane, learned APP for the respondent-State.

2. In the present case, the applicant was arrested on 29.05.2015 i.e. the date of the registration of the FIR for offences under Sections 420 and 120-B of the Indian Penal Code, 1860 (IPC), Sections 3 and 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 as also Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (MPID Act).

3. The principal contention raised on behalf of the applicant is that the maximum sentence that can be imposed upon the applicant, even if he is convicted for the offences registered against him, is seven years. The learned counsel for the applicant submits that the applicant has remained behind bars already for a period of about seven years and ten months and therefore, this Court may allow the present application and direct the applicant to be released forthwith.

4. In order to support the aforesaid contention, the learned counsel

appearing for the applicant has brought to the notice of this Court that after being arrested on 29.05.2015 and his bail application being rejected by this Court, the applicant had approached the Supreme Court. An order was passed by the Supreme Court, releasing the applicant on condition of depositing certain amounts and in that light, he was released from custody on 10.09.2016. It is an admitted position that the bail granted was subsequently cancelled by the Supreme Court due to failure on the part of the applicant to comply with the conditions. The record also shows that in connection with the offence registered against the applicant in Delhi, he was arrested on 16.04.2017. Thereafter, the applicant was produced before the Designated Court under the MPID Act in the present case on 09.10.2017 and *Rojnama* of the said date specifically records these facts.

5. It is further submitted that since 09.10.2017, the applicant continued to remain behind bars. In that light, the applicant had filed an application for bail before the said Designated Court under the MPID Act and prayed for being enlarged on bail in the light of the period of incarceration already undergone. By an order dated 31.07.2020, the Designated Court under the MPID Act rejected the bail application refusing to give benefit of Section 436-A of the Code of Criminal Procedure, 1973 (Cr.P.C.) to the applicant, on the ground that the applicant was arrested and behind the bars in connection with the case pending at Delhi and that he was not formally taken into custody in the present case.

6. The learned counsel for the applicant submits that considering the order as recorded in *Rojnama* of 09.10.2017 by the Designated Court under the MPID Act, the hyper-technical approach adopted by the Sessions Court is not sustainable. Reliance is specifically placed on Section 436-A of the Cr.P.C. to contend that since the applicant has not

just undergone one half of the maximum period of imprisonment that can be imposed upon him, but he has undergone incarceration for more than the maximum period of sentence, the applicant ought to be released forthwith by this Court. On the question as to what could be said to be arrest or being placed in custody, reliance is placed on the judgement of the Supreme Court in the case of *Niranjan Singh Vs. Prabhakar Rajaram Kharote*, **(1980) 2 SCC 559**, particularly paragraph 7 thereof. It is submitted that the period between 29.05.2015 and 10.09.2016 and thereafter from 16.04.2017 till date comes to about seven years and ten months. On this basis, it is submitted that this Court may allow the present application.

7. On the other hand, learned APP submits that the view adopted by the Designated Court under the MPID Act is correct, for the reason that the applicant cannot be said to have been taken into custody in respect of the present case, even if the *Rojnama* records that he was presented before the Designated Court under the MPID Act on 09.10.2017. On this basis, it is submitted that the present application may not be granted.

8. This Court has considered the rival submissions. At the outset, it cannot be disputed that the applicant has undergone incarceration for a period between 29.05.2015 and 10.09.2016 and thereafter from 16.04.2017 till date. In any case, if the date on which he was produced before the Designated Court under the MPID Act in the present proceedings is to be considered, the date of reckoning for his incarceration on the second occasion can be said to be 09.10.2017. Hence, the second period of incarceration can be taken as the period between 09.10.2017 till date. A rough and ready calculation of the total period of incarceration suffered by the applicant, in the context of the present case, leads to the period of about seven years and ten months. The calculation of the period cannot be disputed.

9. The stand taken on behalf of the respondent State that the second period of incarceration cannot be relatable to the present case is a hyper-technical approach, which has to be rejected at the outset. The record shows that upon cancellation of bail, the applicant was arrested on 16.04.2017 in connection with the case registered at Delhi. Hence, he was in custody from 16.04.2017 onwards. The law laid down by the Supreme Court in the case of **Niranjan Singh Vs. Prabhakar Rajaram Kharote** *(supra)*, in paragraph 7, reads as follows:-

> "7. When is a person in *custody*, within the meaning of Section 439 Cr.P.C.? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose."

10. Applying the aforesaid position of law, the second period of incarceration of the applicant begins from 16.04.2017. In any case, the *Rojnama* of the Designated Court under the MPID Act shows that he was produced before the said Court on 09.10.2017, while he was lodged in Tihar jail at that point in time. This Court specifically records that he was produced by the jail authority through the concerned Head Constable from Delhi. Even if there was no consequential formal order of the Designated Court under the MPID Act, on the said date of placing

the applicant in judicial custody in the present case, this Court is of the opinion that the applicant has continued in custody in connection with the present proceedings pending before the Designated Court under the MPID Act, at least from 09.10.2017.

11. Considering the second period of incarceration as starting from 09.10.2017 and adding the same to the earlier period of incarceration between 29.05.2015 and 10.09.2016, the total period of incarceration suffered by the applicant is about seven years and ten months. It is certainly more than the maximum period of sentence that can be imposed upon the applicant, even if he is convicted for the offences registered under the subject FIR.

12. Under Section 436-A of the Cr.P.C., when an accused person suffers half of the maximum sentence that can be imposed, he is entitled to be released on bail on personal bond, with or without sureties. The only requirement is that the public prosecutor is to be heard and reasons in writing are to be recorded by the concerned court.

13. For the reasons recorded hereinabove and upon hearing the learned APP, this Court is convinced that the present application deserves to be allowed. In fact, considering the period of incarceration suffered by the applicant, he deserves to be released forthwith.

14. In view of the above, the application is allowed and the applicant is directed to be released forthwith in connection with FIR being C.R.No.33/2015 registered with EOW, Unit-III, Mumbai (initially registered as FIR being C.R.No.263 of 2015 filed in Goregaon Police Station, Mumbai).

15. Bail application is accordingly disposed of.

(MANISH PITALE, J.)