

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO.95 OF 2003

Shri Shaikh Abdul Kader,  
married, 68 years of age,  
resident of House No.156,  
Campal, Panaji-Goa,  
presently lodged at  
Judicial Lock-up,  
Panaji-Goa.

... Applicant.

versus

State

... Respondent.

Mr. S. G. Dessai, Senior Counsel with Mr. Arun Bras  
D'Sa, Advocate for Applicant.

Mrs. Winnie Coutinho, Additional Public Prosecutor  
for the State.

CORAM: P. V. HARDAS, J.

DATED: 22ND MAY, 2003.

**ORAL JUDGMENT** (PER P. V. HARDAS, J.)

This is an application for Bail filed by the Applicant/Original Accused who is facing trial for an offence punishable under Sections 302 and 307 of the Indian Penal Code and Sections 3 and 25 of the Arms Act, 1959. The allegations against the Applicant/Original Accused is that on 9th February, 2002, at about 4.00 p.m., the Applicant/Original Accused killed one Shaikh Salim alias Gaurishankar by firing his gun and also injured Mrs. Zainub Bi Shaikh. The charge-sheet had been filed by the Police

after the completion of the investigation and the case now stands to the Court of Sessions and is registered as Session Case No.23/2002. On committal, the learned Sessions Judge, Panaji, has framed a charge against the Applicant/Original Accused for an offence punishable under Sections 302 and 307 of the Indian Penal Code and Section 3 and 25 of the Arms Act, 1959 on 3rd July, 2002. The recording of the evidence, however, could not commence as the muddemal articles which had been sent to the Central Forensic Laboratory, Hyderabad, had not been received back.

2. Mrs. Winnie Coutinho, learned Additional Public Prosecutor appearing on behalf of the State states that the report from the Central Forensic Laboratory, Hyderabad and the muddemal articles have been received back and the learned Sessions Judge, Panaji, therefore, would be able to commence the recording of the evidence.

3. The Applicant/Original Accused had filed Bail Application No.26/2003 before the learned Sessions Judge, Panaji, praying for his release on bail. The learned Sessions Judge, Panaji, by his Order dated 17th February, 2003, rejected the application for bail. The ground that was urged before the learned Sessions Judge, Panaji, was that

due to delay of the commencement of the trial the valuable right of the Accused under Article 21 of the Constitution of India for speedy trial was infringed and, therefore, bail was sought on this ground. The learned Sessions Judge, Panaji, in his Order at para 3 has observed that though the charge was framed on 3rd July, 2003, the recording of the evidence could not commence because the muddemal articles had not been received back from the Central Forensic Laboratory, Hyderabad. The learned Sessions Judge, Panaji, also observed that the offence for which the Applicant/Original Accused was charged was serious in nature and the case was based on the evidence of eye witnesses and, therefore, declined to release the Applicant/Original Accused on bail. Hence, the present application.

4. Mr. S. G. Dessai, learned Senior Counsel appearing on behalf of the Applicant/Original Accused has urged before me that the Applicant/Original Accused was arrested on 9th February, 2002 and is an undertrial prisoner for about 15 1/2 months. Though, the charge was framed on 3rd July, 2002, the recording of the evidence has not commenced because of the lapse on the part of the prosecution in not ensuring the receipt of the muddemal articles. Therefore, according to him, there has been an infringement of

right of speedy trial guaranteed to the Applicant/Original Accused under Article 21 of the Constitution of India. He has further submitted that the Applicant/Original Accused is admittedly a heart patient having undergone by-pass surgery in the year 1999 and, therefore, is a sick and infirm person and is entitled to be released on bail under proviso to Section 437 of the Criminal Procedure. Code. He has also urged that the investigation papers do not disclose the offence as a cold blooded or pre-planned murder. For the aforesaid reasons, therefore, the learned Senior Counsel has prayed for releasing the Applicant/Original Accused on bail.

5. Mrs. Winnie Coutinbo, learned Additional Public Prosecutor appearing on behalf of the State has opposed the release of the Applicant/Original Accused on bail primarily on the ground that the Applicant/Original Accused is charged for a serious offence punishable under Sections 302 and 307 of the Indian Penal Code. According to her, the facts as are disclosed in the charge-sheet do not warrant the release of the Applicant/Original Accused on bail. The learned Additional Public Prosecutor has further submitted that the Applicant/Original Accused had undergone an operation nearly four years back and there is nothing to indicate that the health of the

Applicant/Original Accused has deteriorated and requires any immediate medical attention.

6. In response to the Order of this Court, the Applicant/Original Accused was examined by Dr. Anar Khandeparkar, Assistant Professor of Medicine in the Goa Medical College on 12th May, 2003. The report of the Medical Officer is "he does not appear to be suffering from any fresh coronary events".

7. Mr. S. G. Dessai, learned Senior Counsel appearing on behalf of the Applicant/Original Accused has relied on a Judgment of the Supreme Court in **Hussainara Khatoon and others v. Home Secretary, State of Bihar** reported in (1980) 1 SCC 81 to canvass before me that the right to a speedy trial is part of Article 21 and prolonged detention of those awaiting trial violates Article 21.

8. Mrs. Winnie Coutinho, learned Additional Public Prosecutor appearing on behalf of the State does not dispute this proposition that the right to a speedy trial is part of Article 21.

9. Mr. S. G. Dessai, learned Senior Counsel appearing on behalf of the Applicant/Original Accused has further relied on a Judgment of the Supreme Court

in **Nimeon Sangma and others v. Home Secretary, Government of Meghalaya and others** reported in AIR 1979 SC 1518. Reliance is placed particularly on the observations of the Supreme Court in para 5 by which the Supreme Court directed the release of all persons who had been in custody for over six months and whose trials have not commenced or against whom charge-sheets have not been laid. This authority is inapplicable to the facts of the present case as the Supreme Court in para 5 has carved out an exception in respect of the above directions in respect of cases under Sections 302 and 395 of the Indian Penal Code.

10. Mr. S. G. Dessai, learned Senior Counsel appearing on behalf of the Applicant/Original Accused has placed reliance on a Judgment of the Supreme Court in **Satya Brat Gain v. State of Bihar** reported in (2000) 9 SCC 398. In this authority, the Supreme Court had ordered the release of the Accused on bail as the Accused had been languishing in jail for five years awaiting his trial. Similarly, reliance is also placed on a Judgment of the Supreme Court in **Vivek Kumar v. State of U.P.** reported in (2000) 9 SCC 443. The Supreme Court in this case had released the Accused on bail as the Accused was in jail for the last two years awaiting his trial for an offence

punishable under Sections 307 and 395 of the Indian Penal Code.

11. In the present case, the Applicant/Original Accused was arrested on 9th February, 2002 and the charge was framed by the learned Sessions Judge, Panaji on 3rd July, 2002. Thus, the Applicant/Original Accused has been an undertrial for about 15 1/2 months. The learned Sessions Judge, Panaji had in fact, posted the case for recording of evidence but the evidence could not be recorded as the muddemal articles had not been received back from the Chemical Analyser. Therefore, in my considered view, the aforesaid authorities relied upon by the Applicant/Original Accused are inapplicable to the facts of the present case.

12. The delay in the commencement of the recording of the evidence, according to me, is certainly not oppressive so as to be violative of Article 21 of the Constitution of India. According to me, on this count, the Applicant/Original Accused, is not entitled to be released on bail. The evidence could not commence because the muddemal articles had not been received back from the Chemical Analyser.

13. Mrs. Winnie Coutinho, learned Additional Public Prosecutor appearing on behalf of the State has stated that the report and the articles have now been received. The report of the District Judge, Panaji, reveals that there is only one case of the year 2000 which is pending in which the Accused is an undertrial. Thus, it appears to me, that since there is no large pendency of cases of undertrial prisoners, the case of the Applicant/Original Accused can be decided by the learned Sessions Judge, Panaji, expeditiously.

14. The other ground for seeking release on bail on medical grounds was strongly opposed by the prosecution. Admittedly, the Applicant/Original Accused had undergone a by-pass surgery about four years back. The certificate of the Medical Officer dated 12th May, 2003, in fact does disclose that the Applicant/Original Accused is suffering from fresh coronary events.

15. Reliance is placed on a Judgment of the Supreme Court in **State through Deputy Commissioner of Police, Special Branch, Delhi v. Jaspal Singh Gill** reported in (1984) 3 SCC 555 to urge before me that in this authority, the Supreme Court had observed "I am of the view that the High Court should not have



enlarged the respondent on bail in the larger interests of the State. It is urged that the respondent is a person who has undergone a cardiac operation and needs constant medical attention. I am sure that the prison authorities will arrange for proper treatment of the respondent whenever the need for it arises".

16. The Applicant/Original Accused is charged for a serious offence punishable under Sections 302 and 307 of the Indian Penal Code. It is true that the Applicant/Original Accused had undergone by-pass surgery about four years back. According to me, on this ground, the Applicant/Original Accused is not entitled to be released on bail as for the moment, the Medical Certificate does not disclose that the health of the Applicant/Original Accused has deteriorated to such an extent that he requires constant medical attention warranting his release. The Jail Authorities are directed to provide prompt medical assistance to the Applicant and to arrange for his treatment whenever the need arises.

17. In view of the above discussion, I am not inclined to allow the application for releasing the Applicant/Original Accused on bail.

18. In the result, therefore, Criminal Miscellaneous Application No. 95 of 2003 is dismissed.

P. V. HARDAS, J.

RD.