

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1551 OF 2014**

Sadik @ Banta @ Sajid @ Salman Bangali ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. S. R. Chitnis, Sr. Counsel i/b Mr. Pankaj D. Kavale for the Applicant

Ms. P. P. Shinde, A.P.P for the Respondent No.2-State

CORAM : REVATI MOHITE DERE, J.

MONDAY, 9TH MARCH, 2015

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P.
2. This is the second bail application preferred by the applicant. By this application filed under Section 439 of the Code of Criminal Procedure, 1973., the applicant seeks his enlargement on bail in connection with C. R. No. I-416 of 2006 registered with the Turbhe Police Station, Thane, for the alleged offences punishable under Sections 307, 387, 452 r/w 34 of the Indian Penal Code ('IPC') and under Sections 3, 25 and 27 of the Arms Act and under Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 ('MCOC Act').

3. The present applicant along with eight other accused has been charged for the said offences. According to the prosecution, all the accused persons were the members of the organized crime syndicate headed by the gangster and absconding accused Ravi Pujari. All the accused are alleged to have indulged in criminal activities by demanding ransom, giving threats and committing murders. On 25th September, 2006, at about 2:30 p.m., it is alleged by the prosecution that the present applicant who is original accused No.5 and Ravindra @ Ramu Bhausaheb Ghare (original accused No.6) unauthorisedly entered the office of the complainant. It is alleged that the present applicant gave a chit to the complainant bearing a telephone number and asked him to contact the said person on phone. It is alleged that Ravindra @ Ramu Bhausaheb Ghare (original accused No.6) fired two bullets from his revolver in the direction of the complainant and the witness, thus, creating terror in the minds of the persons, to give ransom, as demanded by Ravi Pujari. During investigation, it transpired that accused No. 1- Rohan Felix D'Costa; accused No. 4-Asif Yusuf Khan; accused No. 7-Deepak Laxman Patil; and accused No. 8-Iklak Rahim Shaikh had done a recce of the spot of the incident; accused No. 4-Asif Yusuf Khan had got one motor cycle from Pune and handed it over to the

present applicant and the original accused No. 6 for the commission of offence. It is alleged that the present applicant had written a phone number on the chit and had thrown the chit in the office of the complainant. After firing two rounds, all the accused are stated to have ran away. Accused No. 6 Ravindra @ Ramu Bhausahab Ghare, in his confessional statement is alleged to have confessed and given a detailed account of the role played by each of the accused.

4. Mr. Chitnis, the learned Senior Counsel for the applicant sought bail essentially on three grounds (i) on the ground of parity; (ii) on merits; and (iii) on the ground of delay in the conduct of the trial. He submitted that the role of the present applicant was similar to the role of the other accused who have been released on bail by this Court as well as by the trial Court. He submitted that the only material *qua* the present applicant is the confessional statement of the co-accused and CDR record. He submits that the applicant has not been identified by any of the witnesses, as no identification parade was held, nor is there any recovery at his instance of any weapon allegedly used in the commission of the offence. He submitted that in fact, no revolver/pistol allegedly used in the

commission of the offence has been recovered/seized in the said case. He further submitted that despite the orders of this Court, directing expeditious hearing of the case in a time-bound manner, till date, the trial has not commenced and not a single witness has been examined. He submitted that the applicant has been in custody from the date of his arrest i.e. 18th April, 2008, till date i.e. for almost seven years in an offence under Section 307 of the IPC and under the MCOC Act. According to him, the applicant has already served more than the sentence that may eventually be awarded, if the offence is proved.

5. *Per contra*, learned A.P.P opposed the application. As far as the submission regarding bail on the ground of parity, the learned A.P.P does not dispute that the material *qua* the other co-accused, also is in the nature of the confessional statement of the co-accused as well as audio CDR records. She submits that the only additional material as against the applicant is a chit thrown by him, in the office containing a telephone number, allegedly in the handwriting of the present applicant. Insofar as merits are concerned, the learned A.P.P submits that the present applicant was present at the spot when Ravindra @ Ramu Bhausaheb Ghare (original

accused No.6) entered the office and fired at the complainant and the witness. On the point of delay, the learned A.P.P submitted that the trial may be expedited.

6. Perused the papers, the charge-sheet, the orders passed by this Court and the Sessions Court enlarging the co-accused on bail as well as the orders passed by this Court, expediting the trial of the case within a stipulated period. It appears from the prosecution case, that in order to extract money from a builder at the behest of the gang leader Ravi Pujari, the present applicant, Ravindra @ Ramu Bhausahab Ghare (original accused No.6), Deepak Patil, Rohan and Hemant had been to the office of the builder's firm. It is alleged by the prosecution that out of the said five persons, Deepak Patil, Rohan and Hemant stood outside, whereas, the present applicant and Ravindra @ Ramu Bhausahab Ghare (original accused No.6) went up to the office and that accused No. 6 Ravindra Ghare fired from his revolver. Thereafter, all the five persons fled away from that place, leaving behind a chit, containing the contact number of Ravi Pujari. The complaint/FIR was lodged as against unknown persons. Admittedly, no identification parade was held. No witness has named any of the accused

and have only stated that it was done at the instance of Ravi Pujari. Admittedly, there is no recovery at the instance of the present applicant. The material *qua* the present applicant is the confessional statement of co-accused Ravindra @ Ramu Bhausahab Ghare (original accused No.6) and CDR records. Vide order dated 26th April, 2010, this Court (Coram : R. S. Mohite, J. as he then was) was pleased to enlarge the co-accused Deepak Laxman Patil on bail in Criminal Application No. 2914 of 2009. While granting bail, it was observed by the learned Judge as under:

“1. In so far as material in the present offence against the present applicant is concerned, the same rest upon a confession of the co-accused i.e accused no.4 Ravindra. It is true that under Section 18 of the MCOC Act, confession of the co-accused is a substantive piece of evidence but the Supreme Court has held that it is not a substantial evidence and the Court would look for corroboration. In the present case there is no corroboration. The police have recorded the statement of another co-accused by name Sadiq Bangali who was a person who actually fired. Sadiq Bangali does not talk about any other person standing outside the premises. APP pointed out that in the memorandum statement of Sadiq Bangali, he has involved the present applicant. That statement is not before the authorised officer entitled to investigate under MCOC. The said statement is in-admissible in evidence and ultimately the same cannot be used for the purpose of corroborating the alleged confession of co-accused Ravindra.”

7. Similarly, vide order dated 21st December, 2011, co-accused Asif Yusuf Khan and Iklak Rahim Shaikh were enlarged on bail by this

Court (Coram : J. H. Bhatia, J.) in Criminal Bail Application No. 1368 of 2011. In this case, the material as against the original accused Nos. 4 and 8 was the confessional statement of the co-accused as well as the audio CDR records with gangster Ravi Pujari, which were intercepted. Similarly, original accused Siddhappa, who had allegedly supplied the weapon, which was used in the commission of offence, was also enlarged on bail. As far as the memorandum statement of the present applicant is concerned, the same was recorded in another case and not before an authorised officer, entitled to investigate under the MCOC Act and therefore, it was observed that the said statement is clearly inadmissible in evidence and ultimately, cannot be used even for corroboration of the alleged statement of the co-accused Ravindra Ghare.

8. It is thus evident, that all similarly placed co-accused have been released on bail and the material as against the present applicant being the same, the applicant is entitled to be released on bail on the ground of parity.

9. Delay by itself, may not be a ground for enlarging an accused charged under the MCOC Act, on bail. What is also disturbing to note, in the present case is, that the said applicant had earlier preferred Criminal Bail Application No. 1358 of 2013 and this Court (Coram : R. C. Chavan, J.) vide order dated 3rd September, 2013, had observed in para 2 of the said order as under :

“2. The learned counsel for the applicant submits that the applicant is in custody since 18/04/2008 and that the applicant would be satisfied, if the trial is ordered to be completed within a period of six months. Considering the fact that the applicant in this case is in jail for over five years, the learned trial Judge may fix up a programme of trial and communicate it to this Court. If the trial cannot start within a period of six months, let the learned trial Judge communicate to this Court as to why the trial cannot take place within six months.” (emphasis supplied)

10. Accordingly, the matter stood over to 3rd October, 2013. On 15th October, 2013, this Court (Coram : U. V. Bakre, J.) in paras 2 and 3 of the said order, observed as under :

“2. The learned counsel appearing on behalf of the applicant had made a statement on 3rd September, 2013 that since the applicant is in custody from 18th April, 2008, he would be satisfied, if the trial is ordered to be completed within a period of six months. Therefore, the

trial Judge was directed to fix up a programme of trial and communicate the same to this Court. However, no such programme appears to have been fixed. Be that as it may, the learned APP, under the instructions from A.P.I. Mr.P.S.Desai submits that witness summons has already been issued to appear on 24th October, 2013 on which day the trial would start. It is reported that there are 117 witnesses cited by the prosecution. The learned counsel appearing on behalf of the applicant submits that the present application be disposed of by directing the trial Court to complete the trial within one year.

3. *In the circumstances above, the learned trial Court shall endeavour to complete the trial within a period of one year from 24th October, 2013.”*
(emphasis supplied)

11. It is a settled position that the confessional statement of a co-accused, is admissible in law under the MCOC Act and can form the basis of conviction, if it is found to be true and voluntary. In the present case, all the co-accused (except accused No. 6 Ravindra @ Ramu Bhausahab Ghare) have been enlarged on bail. The present applicant has neither been identified/named, nor is there any recovery at his instance. The material as against the applicant is identical to that of other co-accused, who have been enlarged on bail i.e. confessional statement of the co-accused and CDR records. The learned A.P.P does not dispute the same. It appears, that despite the order expediting the trial being passed, till date, not a single witness has been examined. It also needs to be mentioned that

despite the direction to the trial Court to complete the trial within one year from the date of the order i.e. on 15th October, 2013, no application seeking extension of time was sought by the trial Court. The applicant has been in custody since 18th April, 2008 i.e. for almost seven years. The principal charge is under Section 307 of the Indian Penal Code, coupled with the Sections under the MCOC Act. Therefore, on the ground of parity, coupled with the delay in conduct of the trial and the fact that the applicant has undergone more than half of the minimum sentence prescribed for the offence, the applicant deserves to be enlarged on bail on the following terms and conditions:

ORDER

(i) The applicant Sadik @ Banta @ Sajid @ Salman Bangali be released on bail in connection with C. R. No. I-416 of 2006 registered with Turbhe Police Station, Thane on executing PR Bond in the sum of Rs. 1,00,000/- (Rupees One Lakh Only) with one or two solvent sureties in the like amount;

(ii) The applicant shall attend the Turbhe Police Station, Thane every fortnight on a Saturday between 4:00 p.m. to 6:00 p.m.;

(iii) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the Turbhe Police Station, Thane;

(iv) The applicant to cooperate with the conduct of the trial;

(v) The applicant shall not leave Mumbai City and Thane district without the permission of the trial Court and shall deposit his passport, if any, with the investigating officer;

(vi) In case of any two consecutive defaults in attendance or in case there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to apply for cancellation of applicant's bail.

(vii) The applicant shall give an undertaking with regard to condition Nos. (ii) to (vi) in the trial Court within a period of one

week from the date of his release.

12. The aforesaid observations are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

13. It is reiterated that irrespective of merits, the applicant is being enlarged on bail by this Court on the ground of parity and taking into consideration the fact, that the present applicant has undergone more than half of the minimum sentence prescribed under the MCOC Act. The observations and the reliefs are restricted to the present case only and shall not be considered as a precedent in other cases.

14. The Application is allowed in the aforesaid terms and is accordingly disposed of.

15. Parties to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.