

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1611 OF 2014

Rajkumar Girdhari Uke. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Ms. Anjali Patil, advocate for Applicant.

Ms. P.P. Shinde, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 24, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for State. Perused papers.

2 This is an application under Section 439 of the Code of Criminal
Procedure, 1973. The applicant herein is arrested on 25/8/2013 in
Crime No. 348 of 2014 registered at Pantnagar Police Station for
offence punishable under Section 399, 402, 467, 468, 471 read with
Section 3 read with 25 of the Indian Arms Act read with Section 37(1)
(A) of Bombay Police Act read with Section 3(1)(ii), 3(2), 3(4) of

M.C.O.C. Act, 1999. The investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 19/8/2013 the patrolling officers of Pantnagar Police station had accosted present applicant and the co-accused moving in suspicious circumstances in their jurisdiction. They were accosted and searched by the police. In their personal search, the police found that the applicant and co-accused were in possession of the deadly weapon like knife. Since they had violated the prohibitory orders, both the accused were brought to Pantnagar Police Station. Later on, the police suspected that the same persons are involved in C.R. No. 196 of 2013 registered at Pantnagar Police Station for offence punishable under Section 394, 397 read with Section 34 of the Indian Penal Code.

4 It had further transpired that the applicant had come to Mumbai from Nandgaon in a Matiz car bearing No. MH 15 AH 4940 and that they had concealed the country-made revolver and 3 live

cartridges and also one factory-made pistol with 10 live cartridges. There was recovery to that effect.

5 It had transpired that on the given date, they had made preparation for committing decoity. They had disclosed the names of the co-accused. The steps taken in investigation also revealed that the applicant was in Nashik and Thane Central Prison and at that time, they had formed a syndicate of like minded criminals and have committed offences like rioting, murder, attempt to murder, dacoity, preparation to commit dacoity, theft etc. In view of this, the applicant alongwith others are being prosecuted under the provisions of M.C.O.C. Act, 1999 after obtaining sanction to prosecute them under the said provisions.

6 The learned Counsel for the applicant submits that the original accused No. 2 Sandeep Pawar had filed Criminal Bail Application No. 1152 of 2014 in this Court and the Hon'ble Court(Coram : A.M. Thipsay, J) had allowed the said application on 22/7/2014 and he

was enlarged on bail. On 14/11/2014, the said order was challenged by the State by filing SLP before the Hon'ble Supreme Court of India and the same is dismissed. The co-accused Shakir @ Guddu Haider Shaikh is also enlarged on bail by the M.C.O.C.A Court. The learned Counsel for the applicant submits that the evidence against the co-accused, who are enlarged on bail is para materia the same and that by virtue of doctrine of parity, the applicant would also be entitled to be enlarged on bail.

5 The learned Counsel submits that the learned Sessions Court has rejected the application filed by the present applicant on the ground that the applicant was convicted of the offence punishable under Section 302 of the Indian Penal Code in Sessions Case No. 446 of 2004 by Judgment and Order dated 5/10/2007. Secondly, the application is rejected on the ground that the applicant had not surrendered before the jail authority soon after his parole period was over.

6 Upon perusal of the records, it is seen that the applicant herein had challenged the Judgment and Order in Sessions Case No. 446 of 2004 in this Court by filing Criminal Appeal No. 1268 of 2007. That by Judgment and Order dated 22nd October, 2013 Hon'ble Division Bench of this Court (Coram : P.V. Hardas and P.N. Deshmukh, JJ) has allowed the appeal and the impugned Judgment is quashed and set aside. The Hon'ble Division Bench after appreciating the evidence adduced by the prosecution had arrived at a conclusion that the prosecution has failed to prove the guilt against the accused beyond reasonable doubt. In view of this, the learned Counsel submits that the circumstances on the basis of which, the bail application was rejected, is no more in existence. Instead, the applicant has been acquitted by the Hon'ble High Court. Hence, it is reiterated that stringent conditions be imposed and the applicant be enlarged on bail.

7 Upon perusal of the records and hearing the submissions advanced across the bar, for the reasons mentioned hereinabove, by

virtue of doctrine of parity, this Court is of the opinion that the applicant deserves grant of bail.

8 It is made clear that the observations made hereinabove are restricted to an application under Section 439 of the Code of Criminal Procedure, 1973. The same shall not be considered while deciding the application for discharge or for quashing of FIR or at the time trial. The learned Trial Court shall decide the matter uninfluenced by the above said observations and arrive at a conclusion only on the basis of the substantive evidence adduced by the prosecution at the time of trial.

9 Hence, following order is passed:

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or more local solvent sureties in the like amount.

(iii) The applicant shall furnish his residential address, where he is going to reside during the pendency of the trial, cell number, landline number and all other details, as required by the investigating agency and also inform the change, if any, to them.

(iv) After release on bail, the applicant shall report to Pantnagar Police Station on 1st and 3rd Sunday of each month till conclusion of the trial.

(v) The applicant shall attend each and every scheduled date before the M.C.O.C. Court in M.C.O.C.A Special Case No. 15 of 2013 pending before Special Court at Mumbai.

(vi) Upon failure to attend two consecutive dates either in the M.C.O.C.A Special Court or in the police station, the prosecution is at liberty to move for cancellation of bail.

10 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)