

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2663 OF 2014**

Ravindra Bhausahab Ghare

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Milan Desai i/b Ms. Saeeda Shaikh 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. The applicant has filed this application under Section 439 of the Code of Criminal Procedure, 1973. By this application, the applicant seeks his enlargement on bail in connection with C. R. No. I-415 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 aforesaid 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.6 and Sadik @ Banta @ Sajid @ Salman Bangali (original accused No.5) unauthorisedly entered the office of the complainant. It is alleged that Sadik @ Banta @ Sajid @ Salman Bangali (original accused No.5) gave a chit to the complainant bearing the telephone number of Ravi Pujari and asked him to contact the said person on phone. It is alleged that the present applicant fired two bullets from his revolver at the complainant and the witness, thus, creating terror in the mind of the employer of the complainant 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 over it to the present applicant and the original accused No. 5 for the commission of offence. It is alleged that Sadik @ Banta @ Sajid @ Salman Bangali (original accused No.5) 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. The present applicant, 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. Desai, the learned Senior Counsel for the applicant sought bail essentially on two grounds (i) on parity; (ii) on merits; and (iii) on the ground of delay in the conduct of the trial. He submitted that the only material *qua* the present applicant is the confessional statement given by him. He submits that apart from that, the applicant has not been identified/named by the witnesses nor is there any recovery at his instance, of the pistol which was allegedly used by the applicant. He submitted that in fact, no revolver/pistol allegedly used in the commission of the offence has been recovered in this case. He further submitted that despite the

orders of this Court in the case of co-accused, 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 today, 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 proved. The learned Counsel relied on the judgment of the Apex Court, in the case of **Arup Bhuyan v. State of Assam**¹, in paragraph 9 of the said judgment, which reads thus:

“9. In the instant case, the prosecution case mainly relies on the alleged confessional statement of the appellant made before the Superintendent of Police, which is an extra-judicial confession and there is absence of corroborative material. Therefore, we are of the opinion that it will not be safe to convict the accused on the basis of alleged confessional statement.”

5. *Per contra*, learned A.P.P opposed the application. Insofar as merits are concerned, the learned A.P.P submits that the present applicant along with Sadik @ Banta @ Sajid @ Salman Bangali (original accused No.5) entered the office and fired at the complainant and the witness. On

¹ 2011 All MR (Cri.) 2034 (S.C.)

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 order passed by this Court in the case of co-accused, 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, Sadik @ Banta @ Sajid @ Salman Bangali (original accused No.5), 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 Sadik @ Banta @ Sajid @ Salman Bangali (original accused No.5) went up to the office and that the present applicant fired from his revolver. Thereafter, all five persons fled away from that place, leaving behind a chit containing the contact number of Ravi Pujari. Admittedly, identification parade was not held. The applicant has thus not been identified/named by either, the complainant or any other witness. Admittedly, there is no recovery of any weapon from the

present applicant. The only material *qua* the present applicant is the confessional statement given by him. It is a settled position of law, that a confessional statement is admissible in law and can form the basis of conviction, if it is found to be true and voluntary. In the present case, there is no other independent corroboration to the said confession, inasmuch as, the applicant has not been identified/named, nor is there any recovery at his instance. In view of the peculiar facts of the case, considering the material *qua* the applicant and taking into consideration that the present applicant has undergone more than half of the minimum sentence prescribed for the alleged offence, and that all the co-accused in the said case have been enlarged on bail, coupled with the delay that has occurred in the conduct of the trial, as set out in detail in Criminal Bail Application No. 1551 of 2014, the applicant deserves to be enlarged on bail on the following terms and conditions:

ORDER

- (i) The applicant Ravindra Bhausahab Ghare be released on bail in connection with C. R. No. I-415 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.

7. 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.

8. It is made clear, tht the observations and the reliefs are restricted to the present case only and shall not be considered as a precedent in other cases.

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

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

REVATI MOHITE DERE, J.