

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 3170 OF 2019

Sharad Chandraprakash Agarwal ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Raja Thakare a/w Mr. Pratap M. Nimbalkar a/w
Siddharth Jagushte a/w Rohan Hogle a/w Ajinkaya V.
Harne a/w Ms. Sakshee P. Chavan i/by M.K. Kocharekar,
Advocate for the Applicant.
Ms. Sharmila Kaushik, A.P.P. for the State-
Respondent.
Mr. Raju Surve, API, DCB, CID, A.E. Cell.

...

CORAM : SANDEEP. K. SHINDE, J.
DATE : 08th JANUARY, 2020.

P.C.

Heard.

2. Applicant is seeking enlargement on bail in connection with Crime no. 261 / 2015 registered with RCF Police Station being renumbered as C.R. No.99 / 2015 for the alleged offences punishable under

Sections 302, 387, 120-B of the Indian Penal Code, 1860 ('IPC' for short) and under Section 3, 7, 25 of Arms Act and Section 3(i)(ii), 3(2)(4) of the Maharashtra Organized Crime Act, 1999 ('MCOCA' for short).

3. Applicant was arraigned as accused no.1 in the said crime. In the course of the investigation, investigating machinery found that alleged a crime has been committed by the applicant and his accomplice as being a syndicate/gang. Thereafter, the sanctioned provision of MCOCA were invoked and applied to the present case.

4. On 29.09.2018, the applicant was granted pardon under Section 307 of the Criminal Procedure Code, 1973 in the said crime by the learned Special MCOC Court. Subsequently on 03.10.2018, statement of applicant came to be recorded under Section 306 of the Cr. P.C. before the learned MCOC Court. Subsequent to granting pardon and recording the statement under Section 306 of Cr.P.C., evidence of the present

applicant came to be recorded before the learned Special MCOC Court at Bombay.

5. It is contended that the applicant as a prosecution witness had disclosed full and true facts and was thereof examined.

6. The applicant after turning an approver, sought his release on bail. However, the learned Special MCOC Court declined to release the applicant on bail vide order dated 17.10.2019. It is in this circumstance, that the applicant has approached this Court for release on bail by invoking inherent jurisdiction of this Court under Section 482 of the Cr.P.C.

7. This application has been filed under Section 482 of the Cr.P.C.; it was placed before Justice Revati Mohite Dere. However since the prayer in the application was for grant of bail, the learned Judge, directed the registry to place the application before

the Court taking up the assignment of bail.

8. The learned Special Court declined to release the applicant on the bail only in view of the statutory bar contemplated under Section 306(4)(b) of Cr.P.C. However, before addressing the issue of statutory bar, it may be stated that the prosecution before the Special Court vide application exhibit 152 has recorded its 'no objection' to release the applicant on the bail, subject to the condition that applicant shall remain present before the trial Court on every date of hearing and shall not tamper with the prosecution evidence.

9. As it appears though the trial is in progress on day to day basis, till date only eight witnesses have been examined out of 41 witnesses and that the applicant approver is in jail for more than year after being granted pardon under Section 307 of the Cr. P.C.

10. In the back drop of the aforesaid admitted

facts, the question is, whether applicant being an approver could be released on bail?

In view of the statutory bar under Section 306(4) (b) of Cr.P.C.; which reads as under :

(4) Every person accepting a tender of pardon made under sub-section (1)-

(b) shall, unless he is already on bail, be detained in custody until the termination of the trial.

11. Mr. Thakre, learned senior counsel, in support of the application for bail has relied on the following judgments :

(1) Subramaniam Vs. State [2014(1) MLJ(Cri)117]

(2) Sandip Kalangutkar Vs. State [Cri. Bail

Application No. 129/2012]

(3) Suresh Chandra Bahri Vs. State of Bihar [1995 Supp

(1) SCC 80]

(4) Noor Taki alias Mamu Vs. State of Rajasthan [AIR 1987 Rajasthan 52]

12. In the case of Premchand Vs. State (1985 Cr.L.J. 1534), the full bench of High Court of Delhi has held thus :

"16. Section 482 of the Cr. P.C. is to the following effect:

Nothing in this Code shall be deemed to limit or effect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

17. The power available under this provision is notwithstanding anything else contained in the Code. In case the High Court is satisfied that an order needs to be made to prevent abuse of the process of any Court, or otherwise to secure the ends of justice, the inherent powers are available, and they are not limited or affected by anything else contained in the Code. We are not oblivious that these powers have not to be ordinarily invoked where specific provisions are contained in the Code or specific prohibitions enacted. However, in cases where the circumstances un-mitigating bring out that a grave injustice is being done, and an abuse of process of court is taking place, either as a result of the acts of the accused taking place, either as a result of the acts of the accused or the unavoidable procedural delays in the Courts, we are of the firm opinion that the inherent powers should and need to be exercised. The approver's evidence in the present case has

already been recorded, and no useful purpose is being served in his detention. The administration of justice is not in any manner likely to be affected by his release. There is no reason to suppose that the machinery of law would not be able to give protection to the petitioner in case any adventurism is sought to be displayed by his confederates, or he carries no apprehensions. It would not be, therefore, correct for the Court to still create such fears and profess to provide him unsolicited protection by detaining him for indefinite period. Thus in the case of A.L. Mehra 1958 Cri. U 413 (supra) the Punjab High Court released the approver from confinement in exercise of inherent powers to prevent the abuse of the process of court, finding that he had been in confinement for several months. Similarly the Madras High Court in the case of Karuppa Servai 1953 Cri LJ 45 (supra) laid emphasis on the detention of an approver till he has deposed at the trial in the Sessions Court truly and fully to matters within his knowledge."

13. The aforementioned judgment of the full bench of High Court of Delhi was also followed by the High Court of Madras in the case of Subramanyam (supra) and had taken a view that a witness even though as an accomplice, need not be detained for more than what is essential for procurement or enabling him to give his

evidence. This personal liberty can therefore be curtailed, if at all, for beneficial ends of administration of justice, and once they are served, his further detention becomes irrelevant.

14. The High Court of Bombay at Goa in the case of Sandip Kalangutkar (supra), had also taken a similar view on the basis of the full bench decisions of Delhi and Rajasthan High Court and held that there is no bar to grant bail to the accused in a specific circumstances where trial of case is unduly prolonged.

15. In the case in hand, besides a 'no objection' of the prosecution to release applicant on bail, yet the prosecution has to examine 32 witnesses and as such, the trial is not likely to conclude within the reasonable period. Apart from that, there is no grievance by the prosecution regarding the violation of any terms of the pardon. He is in jail since 05.12.2015 and has infact, been languishing in jail for more than a year after being granted pardon under

Section 307 of Cr.P.C. Considering the said aspect and taking note of the stand of the respondent that the applicant may be granted bail subject to conditions and in view of the ratio in the decisions referred to herein above, I have no reason to refuse bail to the applicant.

16. In view of the above, I pass the following order;

ORDER

(i) The applicant is directed to be released on bail on furnishing P.R. Bond of Rs.50,000/- with the one or more sureties in the like amount to the satisfaction of the learned Special Court, Additional Sessions Judge and Special Judge under MCOC Court, Mumbai;

(ii) Applicant shall report to the DCB CID AE Cell, on 3rd and 4th Monday of each month

between 11:00 am to 01:00 pm commencing from
January, 2020 till the conclusion of subject
special case;

17. The application is allowed in the
aforesaid terms.

(*SANDEEP. K. SHINDE, J.*)