

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

CRIMINAL BAIL APPLICATION NO. 434 OF 2020

Rockysing Jalindersing Kalyani Applicant
Versus
The State of Maharashtra Respondent

Mr. Subhash Jha i/b. Law Global Advocates for Applicant.
Mr. Amit A. Palkar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 31st JULY, 2021
(Through Video Conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 492 of 2017 registered at Khadak police station, Pune, under sections 8(c), 20(b)(ii)(c), 21(b) and 29 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and under Sections 3(1)(i)(ii), 3(2), 3(4), 3(5) of The Maharashtra Control of Organised Crime Act, 1999 (for short 'MCOC Act'). The applicant was arrested on 07/01/2018 and since then he is in custody. The investigation is over and the charge-sheet is already filed. In this case, provisions of MCOC Act were invoked on 25/01/2018.

2. Heard Shri. Subhash Jha, learned counsel for the applicant and Shri. Amit Palkar, learned APP for the State.

3. The prosecution case started with the First Information Report (for short 'F.I.R.') lodged by Police Inspector Sunil Dogre on 15/12/2017. He has stated that, on that day he was attached to Anti Narcotic Squad, Crime Branch, Pune city, as Police Inspector. At about 2:00p.m. they had gone on patrolling duty. When they had reached at Ekbote colony, at around 3:15p.m. two persons were seen running away suspiciously. The first informant and others got suspicious. They confronted both of them. They gave their names as Gopinath Navnath Misal and Hussain Papa Shaikh. The police squad had reasonable suspicion that they were carrying narcotic drugs and, therefore, immediately two panchas were called. After following due procedure under the NDPS Act and after making them aware of their rights under the Act, both of them were searched. It was found that, Gopinath Misal was carrying 34 gms. of brown sugar and Hussain Shaikh was found with 33 gms. of brown sugar. The contraband was kept in small

paper packets. The contraband was tested on the testing kit. The samples were taken. The accused were arrested. Accused Gopinath informed the police that, he was sent by Aarti Misal, her sister Pooja Misal, Nilofer Shaikh, Azhar Shaikh and the present applicant to collect this contraband from Hussain, the other accused. On this basis, the F.I.R. was lodged under section 8(c), 21(b) and 29 of NDPS Act. A panchanama to that effect was also carried out. Subsequently, the another arrested accused Azhar gave a statement which was recorded under section 27 of the Indian Evidence Act. He showed willingness to point out the place where he had concealed Heroin and Charas. He led the police party to a closed house. There was a flex board on that roof. Below that board the contraband was concealed. There were various small packets of the contraband weighing about 1 Kg. of heroin. Again samples were drawn and the contraband was seized. The investigation was carried out further. The Chemical Analyzer's report confirmed presence of Heroin in the samples.

4. On 07/01/2018, police received a secret informant

that the accused Aarti was to come in a Swift car at Nagar road, Wagholi. The police went there. They intercepted a black coloured Swift car. The applicant was found driving the vehicle. Aarti, Pooja and Nilofer were travelling in the same car. All of them were arrested. During further investigation, pursuant to the statement given by Aarti, some more Heroin was seized which was again more than 1Kg. Pursuant to the statement given by Pooja Misal also Heroin was recovered. Pursuant to the statement given by Nilofer again some contraband was recovered. During the course of investigation, on 25/01/2018 provisions of MCOC Act were invoked and approval under section 23(1)(a) of MCOC Act was granted on 25/01/2018. After conclusion of the investigation the charge-sheet was filed.

5. Learned counsel for the applicant submitted that the applicant is a handicapped person and one of his legs was amputated. Therefore, it was impossible even to imagine that he could be driving a four wheeler. He submitted that, the prosecution story is absolutely false. No contraband is recovered from the

present applicant. Some contraband is shown as having been recovered at the instance of other accused, but there is no recovery at the instance of the present applicant. He submitted that the applicant is in custody since 07/01/2018. This is a long period of incarceration. Shri. Jha submitted that, this affects his fundamental right of speedy trial under Article 21 of the Constitution of India. He submitted that the recovery statements given by other accused are inadmissible and vague and, therefore, they cannot be held against the present applicant.

6. Learned APP basically relied on the contents of the charge-sheet and the prosecution case as narrated herein above.

7. I have considered these submissions. The prosecution case is mentioned in the aforementioned paragraphs. The charge-sheet contains statements of raiding party members and various panchanamas showing recovery of various contraband articles, as mentioned earlier. The charge-sheet also contains panchanama which shows how the applicant and other accused were

intercepted when they were travelling in a Swift car. The important circumstances against the present applicant are confessional statements of two main accused recorded under section 18 of the MCOC Act. Those confessional statements are given by aforementioned accused Gopinath Misal and Hussain Papa Shaikh.

8. Gopinath's confessional statement mentions that, he was cousin of other two accused Aarti and Pooja. They were in the business of selling Brown sugar, Ganja and Charas in Lohiyanagar area. Aarti had relationships with different persons in the past 7 to 8 years. They were Farukh Shaikh, Vishal Satpute, Mukesh Chavan, Akbar and present applicant. They all were criminals and they had created terror in the area of Lohiyanagar, Harka Nagar, Ram Tekdi and Gul Tekdi. They were indulging in illegal trade of Brown Sugar, Ganja and Charas. Because of their terror, nobody was making any complaints to the police. It is specifically mentioned in his confessional statement that, in this illegal business of Aarti, she was assisted by her sister Pooja, one Nilofer, Azhar and the present

applicant. It is further mentioned by him that the present applicant was indulging in sale of Brown sugar, Ganja and Charas in Ram Tekdi area. He was selling the contraband taken from Aarti. Aarti has purchased various properties out of this income. On 15/12/2017, when this accused was at Lohiya Nagar; Aarti, Pooja, Nilofer, Azhar and the present applicant told him that, one Hussain had brought Brown sugar from Mumbai and he was waiting at Ekbote colony. They asked this accused to go to that place and bring Brown sugar which as brought by Hussain. According to the instructions given by other accused and the present applicant, he had gone to that place. He met the other accused Hussain. When Hussain handed over Brown sugar packets to this accused, the police arrested him.

9. Confessional statement of accused Hussain mentions that, he was knowing the other accused Gotya @ Gopinath Misal. This accused has stated that, Aarti used to purchase Brown sugar, Charas and Ganja from this accused Hussain and others and used to give them for sale to her sister Pooja, friend Nilofer, Azhar and

the present applicant. Thus, these two accused whose confessional statements are admissible under the MCOC Act have categorically described the involvement of the present applicant in this offence. The link in the raid conducted on that particular date i.e. on 15/12/2017 is clearly established through these confessional statements.

10. Apart from that, the charge-sheet also contains statements of some witnesses whose names are not divulged claiming privilege under the provisions of MCOC Act. One witness is described as 'G'. His statement is recorded on 02/04/2018, which is at page No.466 of this application. He has stated that the accused Aarti had established relations with the present applicant. She was in business of this illegal sale of Brown sugar, Charas and Ganja. She was helped in her business by Gopinath, Pooja, Nilofer, Azhar and the present applicant. Aarti used to place orders from her relatives in Mumbai. When Heroin, Ganja and Charas was sent to Pune, Aarti used to send Gopinath @ Vishal to bring those contraband articles. Then she used to sale those to the

aforementioned persons including the present applicant. All of them, including the present applicant, used to sale one packet for Rs.150/- to their customers.

11. Another witness described as 'H' whose statement was recorded on 02/04/2018, which is at page No.469 of this application, has stated that the main accused Aarti was indulging in this illegal business since past 6 to 7 years. On one occasion, one person had approached Aarti to get the Brown sugar, at that time, Aarti had beaten him. This witness had questioned Aarti about that. At that time, Aarti had called the present applicant and both of them had abused him. This witness has stated that, as the present applicant was a criminal, he did not lodge complaint against him. He has also stated as to how Aarti used to place orders in Mumbai and as to how she used to collect the contraband through Gopinath. This witness has stated that the accused Aarti had purchased a car and it was used by the present applicant. Similarly, witness described as 'E' at page No.409 of this application has stated that, this applicant had given him four small

packets of Heroin. The applicant had taken them from Aarti who was present there and the applicant had taken money. The witness described as 'F' at page No.411 of this application has stated that, Aarti and the applicant used to collect money in connection with sale of Heroin, Ganja and Charas.

The proposal to apply MCOC provisions show that the accused Aarti had two previous offences registered against her under the NDPS Act at Khadak police station vide C.R.No.3034 of 2015 and at Pimpri police station vide C.R.No. 700 of 2016.

The approval under section 23(1)(a) of the MCOC Act mentions that, Aarti was the gang leader.

The aforementioned statements show that the applicant was a close associate of Aarti and was member of the organized crime syndicate.

12. All these statements show clear role of the present applicant. There is sufficient material against the present applicant. Therefore, considering the specific bar and restrictions

under section 37 of the NDPS Act, as well as, under section 21(4) of the MCOCA Act, this court, under section 439 of the Cr.p.c. cannot grant bail to the present applicant; as the requisite satisfaction required to be mentioned under those sections cannot be recorded in the facts of this case, based on the material available in the form of charge-sheet. In this view of the matter, no case for grant of bail is made out.

13. The application is rejected.

14. The observations in this order are made only for the purpose of deciding this application and the trial court shall independently decide the trial.

(SARANG V. KOTWAL, J.)