

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**BAIL APPLICATION NO.1529 OF 2022
WITH APPLN/3772/2022**

Pravin Ananda Rasal
Aged about 38 years,
Residing at Rasal Wadi,
Nighoj, Taluka Parner
District Ahmednagar
(at present in judicial custody and lodged
at Ahmednagar Central Prison, Ahmednagar.) ...Applicant

Versus

The State of Maharashtra
(at the instance of Sub-divisional
Police Officer, Parner Police Station,
vide C.R. No.I-19 of 2017) ...Respondent

...
Advocate for Applicant : Mr. Nitin H. Sejpal (through video
conference) i/b Mr. S.R. Andhale
APP for the State : Mr. S.B. Narwade
Advocate for Complainant/Assist to P.P : Mr. N.B. Narwade
...

CORAM : S.G. MEHARE, J.

**RESERVED ON : 08th DECEMBER, 2022
PRONOUNCED ON : 22nd DECEMBER, 2022**

ORDER :-

1. The Applicant is seeking bail third time in the present crime. The learned Special Judge rejected his first bail application on 15.11.2017. His second bail application before the Special Judge was rejected on 16.08.2018. The Special Court MCOCA, Ahmednagar, rejected his third bail application on 22.08.2022. The Applicant is seeking bail under Section 439 of the Criminal Procedure Code on

parity and his long detention in prison and no possibility of completing the trial in the near future.

2. Learned counsel for the Applicant would argue that the Applicant is entitled to parity as similarly situated co-accused have been granted bail. The bare allegation against the Applicant is that he was the conspirator; subsequently, he has been treated as the main conspirator who has languished behind the bar since 2017, i.e. for six years. Only four to five witnesses have been examined. The only evidence against the Applicant is his statement recorded on the telephone. In the 2015 and 2017 cases, his voice samples were taken. His voice matched the recorded voice. The Applicant was branded as a gang leader under Section 2(d) of the MCOC Act. Statement of the co-accused under Section 18 of MCOC Act does not refer to the name of the Applicant excepting the liability of offence. Co-accused Akshay also did not confess the name of the present Applicant. The clothes and weapons recovered under Section 27 of the Indian Evidence Act were not blood-stained. The weapon of assault was seized in the month of January, and the applicant was arrested in the month of May. This is the material discrepancy in the investigation. Except for the conversation between the applicant and one Pravin Nichit, the prosecution has no other evidence. The voice sample of said Pravin Nichit were not taken. He relied on certain case laws. He prayed to grant the bail.

3. Learned APP and learned counsel Shri Narwade have vehemently opposed the application. They would argue that though the applicant was not named in the FIR, he is the main conspirator and a gang leader. The bail granted to the co-accused on 07.06.2020 has been cancelled. Twelve crimes are to the discredit of the applicant. The sanction was granted with the application of mind. The prosecution has sufficient evidence proving the plotting of the conspiracy. Human blood was found on the weapon. The CDR conversation between the co-accused corroborates the prosecution's case. There are witnesses to the conspiracy. The conduct of the applicant reveals that since inception, he has been conspiring. There was a recovery of the material that corroborates the investigation. There were 19 chop injuries on the body of the deceased. The deceased was killed brutally. The conversation is the best evidence to believe the ill-motive of the applicant. The applicant and others have used the bogus number plate for the vehicle. The Sim card of the applicant was also seized. The sanction granting leave to prosecute the applicant under MCOC Act is correct. Considering the material against the applicant, he does not deserve bail.

4. In addition to the above argument, learned counsel Shri Narwade for the victim/complainant vehemently argued that the intention to finish the deceased was executed. There is strong

evidence against the applicant. If released, he may tamper with the prosecution witnesses. Hence, the applicant is not entitled to bail.

5. In reply, learned counsel for the applicant would argue that there is no evidence of blood on his cloth. The prosecution has no evidence to support the recovery. Accused Pintu brought the alleged car. At that time, the applicant was at Wardha. There is no apprehension that the applicant may repeat the crime.

6. In the case of Jayendra Saraswathi Swamigal Vs. The State of Tamil Nadu, 2005 SCC (Cri) 481, the Hon'ble Supreme Court has held that the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case are the considerations which normally weigh with the Court in granting bail in non-bailable offences.

7. In the case of Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and another, 2005 SCC (Cri) 1057, the Hon'ble Supreme Court on factors to be considered for bail under MCOC Act laid that whether the accused had requisite mens rea and whether he may not be ultimately convicted for offences under the Act, the culpability of accused and his involvement in the commission of an

organized crime directly or indirectly and whether having regard to the antecedents of the accused and other relevant aspects there was a probability of his not committing any offence under the Act in future are to be considered. Court has to record its findings which would be only tentative based on broad probabilities.

8. In the case of Iqbal Ahmed Kabir Ahmed Vs. The State of Maharashtra, 2021 ALL MR (Cri) 3105, the Bombay High Court held that where there is no likelihood of case being decided within reasonable time; as result, right of accused to speedy trial under Article 21 of Constitution, comes to force; hence, the accused entitled to be released on bail on appropriate conditions. On the same ground of no possibility of disposing of the trial in the near future, in the case of Indrani Pratim Mukerjea Vs. Central Bureau of Investigation and Another, in Petition(s) for Special, Leave to Appeal (Crl.) Nos.1627 of 2022 dated 18.05.2022, the Supreme Court has considered the possibility of disposal in the near future. The Hon'ble Supreme Court has also considered the detention period of the accused and has granted bail to the accused in the said case.

9. It is not in dispute that the applicant did not assault the deceased and was not present on the scene of occurrence. The prosecution has evidence of the witness who overheard the conversation of the present applicant with the other co-accused hatching the conspiracy to kill the deceased in the field and clinic of

Dr. Zaware. The statement of Namrata Harne, Sunita Uchale and Vilas Harande was recorded to support the case of conspiracy. Whether the witnesses overheard the discussion of the accused conspiring for the murder of the deceased would be a matter of evidence during the trial.

10. The prosecution has strong reliance on the recorded conversation of the applicant and Pravin Nichit. It was recorded on the phone of Pravin Nichit in 2014. The tape-recorded conversation is a statement. The Hon'ble Supreme Court in the case of Kartar Singh Vs. State of Punjab, (1994) 3 SCC 569, in paragraph no. 205 has observed thus;

“205. In our Constitution as well as procedural law and law of Evidence, there are certain guarantees protecting the right and liberty of a person in a criminal proceeding and safeguards in making use of any statement made by him. Article 20(3) of the Constitution declares that “No person accused of any offence shall be compelled to be a witness against himself.”

11. Bearing in mind the protection guaranteed to the accused under the law, the evidential value of such conversation is to be tested before the trial Court. Besides the above, whether the applicant had knowledge of recording his conversation is also a question for consideration. Secretly recording the confession by a private party in violation of consent laws then it would probably not be admissible. The next suspicious circumstance is how that recorded conversation

reached the third person. In view of the law regarding the tape-recorded confessional conversation, the Court is of the view that not much weightage may be given to the said recorded conversation at this juncture.

12. The prosecution has a case that Pintu Rasal, Mauli Rasal and Mukhtar Inamdar, who have allegedly been the members of the conspiracy plotted in the field of Dr. Zaware. Besides this, some witnesses in the clinic of Dr. Zaware, overheard the words from the mouth of the applicant that the deceased was to be eliminated. However, the other similarly situated co-accused have been granted bail. The allegations levelled against them, and the applicant are similar. The Court granted them bail after considering the material collected by the investigation officer and assigning the reasons. The rule of parity is that where the co-accused had been granted bail in similar circumstances, he may be granted bail. However, it cannot be a sole criterion for granting bail to another co-accused if they are standing on a different footing.

13. Considering the role attributed to the present applicant and the co-accused, who have been granted bail, the Court is of the view that the parity cannot be denied.

14. The Applicant has been behind the bar for about six years. The prosecution has listed around 156 witnesses; out of them, only four to five witnesses have been examined within six years. The

Hon'ble Supreme Court, in the case of Indrani Pratim Mukerjea (cited supra), has considered the factum of the length of custody of the accused and the number of witnesses remained to be examined and the possibility of completing the trial in the near future and granted bail to the accused. Considering the length of the applicant behind the bar for around six years and the number of witnesses remained to be examined, the view taken by the Hon'ble Supreme Court in the case of Indrani Pratim Mukerjea (cited supra) would be applied to the case of the applicant.

15. For the reasons stated above, the Court is of the view that the applicant is entitled to bail on certain stringent conditions. Hence, the following order :

ORDER

I) Bail application is allowed.

II) The Applicant, Pravin Ananda Rasal, be released on bail on executing P.B. and S.B. of Rs.2,00,000/- (Rupees two lacs) with one solvent surety in the like amount in connection with Crime No.19 of 2017, registered at Parner Police Station, District Ahmednagar for the offence punishable under Sections 302, 120-B, 143, 147, 148, 149, 109, 212, 465, 468, 201 of the Indian Penal Code, under Section 3/25, 4/25 and 27 of the Arms Act and under Section 3(1)(i), 3(1)(ii), 3(2) and 3(4) of the MCOC Act, on the condition that;

(a) The applicant shall not enter the Ahmednagar District except for the purpose of trial before the MCOCA Court, Ahmednagar, till the conclusion of the trial.

(b) He shall not contact any witness on the phone or by any other mode.

(c) He shall not influence any witness himself or through any well-wishers, relatives or friends.

(d) He shall keep informing the police of his residential address and cell phone number during his stay out of Ahmednagar District and shall report every 1st and 3rd Tuesday between 11.00 am to 01.00 pm to the PSO of the police station of his locality where he would reside after his release.

III) Criminal Application No.3772 of 2022 is allowed and disposed of.

(S.G. MEHARE, J.)