

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO. 33 OF 2022**

Anil Shankar Patil

... Applicant.

Vs.

The State of Maharashtra

... Respondent.

Mr. M.S. Mohite, Senior Advocate i/b. Mr. Vivek Babar for Applicant.

Mr. Pradip D. Gharat, Special PP a/w. Mr. H.J. Dedhia, APP for Respondent-State.

CORAM : A.S. GADKARI, J.**DATE : 29th JULY, 2022.****P.C.:-**

By this Application under Section 439 of the Code of Criminal Procedure read with Section 21(4) of The Maharashtra Control of Organized Crime Act, 1999 (for short, '*MCOC Act*') Applicant seeks his enlargement on bail in connection with C.R. No.46 of 2017 registered with C.I.D., Mumbai (C.R. No.435 of 2017 registered with Dharavi Police Station) for the offence punishable under Sections 387, 504, 506(2) read with Section 34 of the Indian Penal Code, Section 7 of The Criminal Law Amendment Act, 1932 and Sections 3(1)(ii), 3(2), 3(4) of MCOC Act.

2 Heard Mr. Mohite, learned Senior Advocate for the Applicant and Mr. Gharat, learned Special PP for the State. Perused record and the Affidavit-in-reply dated 20th July, 2022 filed by Shri. Savlaram Aagwane,

Assistant Commissioner of Police D (Special)-DCB CID, Mumbai.

3 This is second Application for bail by the Applicant. The earlier Application for bail bearing No.2174 of 2018 was rejected by this Court by Order dated 21st January, 2021. The said Order dated 21st January, 2021 was challenged by the Applicant before the Hon'ble Supreme Court by way of Petition(s) for Special Leave to Appeal (Crl.) No(s). 3632 of 2021. The Hon'ble Supreme Court by its Order dated 28th May, 2021 was pleased to dismiss the Special Leave Petition, however granted liberty to the Applicant to renew his prayer for bail before the High Court after a period of six months. In furtherance of the liberty granted by the Hon'ble Supreme Court, the Applicant has filed present Application seeking his enlargement on bail.

4 At the outset, Mr. Mohite, learned Senior Advocate appearing for the Applicant submitted that, he is not contesting present Application on merits, as this Court has already decided the earlier Bail Application No.2174 of 2018 on its merits. However by present Application, the Applicant seeks his release on bail only on the ground of prolonged incarceration without trial. He submitted that, the Applicant has been arrested on 31st January, 2018 and since then for about 4½ years, he is in custody without trial. He submitted that, the charge in the present case has been framed by the prosecution belatedly on 4th January, 2022 i.e. after about 4 years from the date of arrest of the Applicant, however till date not

a single witness has been examined by the prosecution. That, a list of 65 witnesses has been annexed along with the charge-sheet by the investigating agency. That, it may take considerable time to examine 65 witnesses and conclude trial. He submitted that, speedy trial is a right of accused and keeping the accused in jail for prolonged period without speedy trial would amount to violation of the fundamental rights as enshrined in the Constitution of India. He submitted that, the minimum sentence prescribed under the provisions of MCOC Act which have been charged in the present crime, is five years of imprisonment. That, long period of incarceration and unlikelihood of the trial being completed in the near future necessitates consequential release of the undertrial on bail. He submitted that, the presence of statutory restrictions as contemplated under Section 21(4) of MCOC Act, *per se* does not oust the ability of the constitutional Courts to grant bail on the grounds of violation of the fundamental rights guaranteed under the Constitution. In support of his contentions, he relied on the following decisions of the Supreme Court and our High Court namely-

- i) *Union of India Vs. K.A. Najeed reported in (2021) 3 SCC 713;*
- ii) *The National Investigation Agency Vs. Areeb Ejaz Majeed, Criminal Appeal No.389 of 2020, dated 23rd February 2021 (Division Bench);*
- iii) *Ajit Bhagwan Tiwde Vs. State of Maharashtra,*

reported in 2022 ALL MR (Cri) 1687;

iv) Sachin Atmaram Vartak Vs. The State of Maharashtra,

Bail Application No.430 of 2021, dated 5th January 2022 and;

v) Mohammad Raisuddin Vs. National Investigating Agency & Anr., reported in 2022 SCC OnLine Bom 1331.

He therefore prayed that, the Applicant may be released on bail.

5 Per contra, Mr. Gharat, learned Special PP for the State, vehemently opposed the Application and submitted that, this Court has earlier considered merits of the case and rejected the Application for bail of the Applicant. That, there is no change in circumstance to grant bail to the Applicant. He submitted that, the decisions cited by the learned Senior Advocate for the Applicant and noted hereinabove are not applicable to the present case. That, in the above noted decisions the accused therein have undergone on an average five years of pre trial custody. He submitted that, the Applicant filed Applications for bail and discharge before the trial Court and that is the reason for delay in trial. He further submitted that, due to COVID-2019 pandemic also the trial could not progress which resulted into delay in framing of charge and conducting trial. He submitted that, Section 3(1)(ii) of the MCOC Act prescribes maximum punishment for life and the said criteria of maximum punishment be taken into consideration instead the criteria of minimum punishment prescribed under the various decisions. He submitted that, prosecution may consider to examine approximately 30

to 35 witnesses in totality in support of its case and may not examine all the 65 witnesses listed in the charge-sheet. He therefore prayed that the present Application may be dismissed.

6 The Hon'ble Supreme Court in the case of *Union of India Vs. K.A. Najeed (Supra)* in paragraph Nos.10, 11, 12, 15 and 17 has held as under:-

“10. *It is a fact that the High Court in the instant case has not determined the likelihood of the respondent being guilty or not, or whether rigours of Section 43-D(5) of UAPA are alien to him. The High Court instead appears to have exercised its power to grant bail owing to the long period of incarceration and the unlikelihood of the trial being completed anytime in the near future. The reasons assigned by the High Court are apparently traceable back to Article 21 of our Constitution, of course without addressing the statutory embargo created by Section 43-D(5) of UAPA.*

11. *The High Court's view draws support from a batch of decisions of this Court, including in Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616 : 1996 SCC (Cri) 366, laying down that gross delay in disposal of such cases would justify the invocation of Article 21 of the Constitution and consequential necessity to release the undertrial on bail. It would be useful to quote the following observations from the cited case: (SCC p.622, para 10)*

“10. *Bearing in mind the nature of the crime and*

the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh case [(1994) 3 SCC 569 : 1994 SCC (Cri) 899] , on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21.”

(emphasis supplied)

12. *Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act”) which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi) (1999) 9 SCC 252 : 1999 SCC (Cri) 1156, Babba v. State of Maharashtra (2005) 11 SCC 569 : (2006) 2 SCC (Cri) 118 and Umarmia v. State of Gujarat (2017) 2 SCC 731 : (2017) 2 SCC (Cri) 114 enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.”*
- “15. *This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial.*

In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.”

- “17. *It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the*

possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

The said decision of the Hon'ble Supreme Court in the case of *Union of India Vs. K.A. Najeeb (Supra)* has been followed by the co-ordinate Benches in the four other cases noted hereinabove.

7 In the case of *Ajit Bhagwan Tiwde Vs. State of Maharashtra (Supra)* in paragraph No.19 it is held as under:-

“19. The settled principle of law is that prolonged custody affects fundamental rights under Article 21 of Constitution of India. There is no debate that incarceration in custody for long period without trial or completion of trial affects personal liberty guaranteed under Article 21 of Constitution of India.”

In the said decision also reliance has been placed in the case of *Union of India Vs. K.A. Najeeb (Supra)* while reiterating the said principle of law.

In the case of *Sachin Atmaram Vartak Vs. The State of Maharashtra (Supra)* the learned Single Judge of this Court in paragraph No.34 has held that, in the light of observations of the Supreme Court and this Court as noted therein, the Court has to perform balancing act. That, the sympathy for undertrials who are in custody has to be balanced with gravity/magnitude and likelihood of threat to witnesses and the analysis may be based on the facts of each case. In paragraph No.35 it has been

further held that, *“Prolonged custody infringes Article 21 of the Constitution of India.”*

In the case of James Jaffrin Almeida @ Sam Vs. The State of Maharashtra (Bail Application No.175 of 2022 dated 15th March, 2022) the learned Single Judge of this Court while considering an Application for bail for an offence punishable under provisions of MCOC Act, has held that, *“the restrictions under Section 21(4) of MCOC Act would not be an impediment in granting bail due to prolonged incarceration of accused without trial in the said case.”*

Another co-ordinate Bench of the learned Single Judge of this Court (Smt. Revati Mohite Dere, J.) in the case of Mahesh Munna Pal Vs. State of Maharashtra (Bail Application No.922 of 2018, dated 3rd March, 2020) while considering an Application for bail in a crime under the provisions of MCOC Act has also considered the criteria of prolonged custody and minimum sentence of 5 years for the offence alleged against the accused prescribed under the provisions of the said Act and also the fact that, the accused therein was in custody for more than 4½ years, as a parameter for granting bail.

It is thus by now well settled and recognized principle of law that, prolonged incarceration without trial amounts to infringement of or violation of Article 21 of the Constitution of India of an accused.

8 In the present case, as noted above the Applicant has been

arrested on 31st January, 2018. The prosecution framed charge against the Applicant on 4th January, 2022 i.e. approximately after 4 years of his arrest and till date not a single witness has been examined by it. Applicant is behind bars without trial for about 4½ years. There are 65 witnesses mentioned in the list of witnesses annexed to the charge-sheet. Though the learned Special PP submitted across the bar that the prosecution may consider to examine 30 to 35 witnesses in totality in support of its case, perusal of Affidavit-in-reply filed by Shri. Savlaram Aagwane dated 20th July, 2022 is silent on that aspect. The minimum punishment prescribed for the offences alleged to have been committed by the Applicant under the provisions of MCOC Act is 5 years. The possibility of conclusion of trial of the present case in near future appears to be remote. Taking into consideration the fact that, Applicant is in custody for more than 4½ years for an offence which is punishable with minimum 5 years of imprisonment and after applying the aforementioned principles of law, the Applicant can be enlarged on bail.

9 Hence the following Order-

- (i) Applicant is directed to be released on bail in C.R. No.46 of 2017 registered with C.I.D., Mumbai (C.R. No.435 of 2017 registered with Dharavi Police Station) on his executing P.R. bond in the sum of Rs.1,00,000/- with one or more sureties in the like amount;

- (ii) Applicant shall report Dharavi Police Station once in a month on every first Saturday between 11 am and 1 pm till conclusion of trial;
- (iii) Applicant shall not leave India without prior permission of Special Court;
- (iv) Applicant shall deposit his passport before Special Court;
- (v) Applicant shall not tamper with evidence;
- (vi) Applicant shall furnish details of his residence to the Trial Court as well as Dharavi Police Station;
- (vii) Bail Application No.33 of 2022 is allowed and disposed of.

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

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