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

BAIL APPLICATION NO. 40 OF 2020

Ali @ Alisher Lalmohammed Saudagar .. Applicant
VS.
The State of Maharashtra .. Respondent

Mr. Mithilesh Mishra i/b Mr. Agastya Desai, for Applicant.
Ms. Veera Shinde, APP for State.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 26, 2022

P.C. :

1. This is an application for bail under section 439 of the Code of Civil Procedure, 1973 ('CrPC' for short). The applicant- the original accused no.3 was arrested on 21/03/2017 for the offences punishable under sections 8(c), 21(b), 22(b), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short).

2. It is the case of the prosecution that accused no. 1 was arrested by officers of Anti Narcotic Cell, Crime Branch, Pune by Khadki Police Station in respect of C.R. No. 3059 of

2019 on 19/03/2017 on the allegation that accused No.1 was found in possession of 11 gram of Heroine (gurd powder) and cash amount of Rs.1,200/-. Accused no.1 was produced before the Judicial Magistrate First Class ('JMFC' for short) at Pune and while in police custody, the accused no.1 disclosed the name of present applicant. Thereafter the officials of Khadki Police Station arrested the applicant on 21/03/2017 from Ahmednagar and during the search it is alleged that 5.140 grams of Heroine was recovered and seized under a panchanama. The applicant preferred an application for bail which came to be allowed by the Sessions Court on 31/03/2017. Before the applicant could secure his release on the basis of the bail granted by the learned JMFC, Khadki, the respondent obtained sanction under section 23(2) of the Maharashtra Control of Organised Crime Act, 1999 ('MCOC Act' for short) vide order dated 29/08/2017. Thereafter the charge-sheet came to be filed in the Special Court against the original accused nos. 1, 2 and applicant and accused no.4 vide MCOC Special Case No. 20 of 2017 also under sections 3(i)(ii), 3(2), 3(4)

of MCOC Act.

3. During the course of investigation, it transpired that the alleged offence of organized crime was committed by the syndicate which was headed by the applicant. The charge-sheet came to be filed on 11/09/2017.

4. Learned Counsel for the applicant submitted that the applicant is in custody for almost 5 years since the date of his arrest. It is further submitted that out of the 8 cases registered against him from the year 2011 onwards, the applicant has been acquitted in as many as 6 cases. Only 2 cases, viz, the present C.R. No. 3059/2017 and 3022/2017 are pending. Learned Counsel submitted that having regard to these acquittals, there is no continuing unlawful activities so as to attract the provisions of MCOC Act. Learned Counsel submitted that even otherwise, the applicant is now in custody for almost 5 years and hence, may be released on bail. In support of his submission, learned Counsel relied upon the decision of the Apex Court in the case of **State of Maharashtra Vs. Shivaji Ramaji Sonwane (2015) 14 SCC 272.**

5. Learned Counsel then relied upon the decision of this Court dated 03/03/2020 in the case of **Mahesh Munna Pal Vs. State of Maharashtra in Criminal Bail Application No. 922 of 2018** to submit that in respect of offence punishable under MCOC Act, this Court had enlarged the applicant on bail as he was in custody for more than four and half years.

6. So far as offence under NDPS Act is concerned, it is contended that the procedure adopted by the raiding authority is against the mandate of section 50 of the NDPS Act. He submits that conditions mentioned in section 50 that search of the persons shall be conducted in the presence of Gazetted Officer or Magistrate was not fulfilled. To support his submission, he relied upon the decision of the Apex Court dated 29/10/2010 in the case of **Vijaysinh Chandubha Jadeja Vs. State of Gujarat in Criminal Appeal No. 943 of 2005** and in the case of **Arif Khan alias Agha Khan Vs. State of Uttarakhand reported in (2018) 18 Supreme Court Cases 380.**

7. Learned Counsel also relied upon the decision of this

Court dated 20/01/2022 in **Criminal Bail Application No. 2295 of 2021 in the case of Sholadoye Samual Joy Vs. The State of Maharashtra** to submit that this Court had considered the scope of section 50 in NDPS Act.

8. Learned Counsel then submitted that it is only on the basis of the confession of the accused no.1 under section 18 of the MCOC Act that the applicant is proceeded against with. He points out that accused no.1 has retracted his confession wherein he had named the applicant and therefore such confessional statement cannot be acted upon. To support his submission, he relied upon the decision of the Apex Court in the case of **Kartar Singh Vs. State of Punjab (1994) 3 Supreme Court Cases 569.**

9. Learned APP on the other hand opposed the application. It is her submission that the applicant is the leader of the syndicate. She submitted that though in some of the cases, the applicant is acquitted, but the official website indicates that there are as many as 5 criminal cases still pending against him. In any case, it is her submission that merely because the applicant is acquitted in some

cases is no ground for enlarging the applicant on bail in view of the express language of section 3 of MCOC Act. Learned APP relied upon the decision of Aurangabad Bench of this Court dated 03/08/2021 in the case of **Darasing alias Maruti Vakilya Bosale and ors. Vs. The State of Maharashtra in Criminal Appeal No. 901 of 2018** in support of her submission.

10. Learned APP then invited my attention to sub-section 4 of section 21 of the MCOC Act. She submits that the number of criminal cases registered against the applicant under the various provisions of IPC and NDPS Act (8 in all) indicates his propensity to commit the same type of offence in future. It is her submission that this is not a case where there are reasonable grounds for believing that the applicant is not guilty of offence under MCOC Act.

11. Heard. Learned APP has produced a chart indicating that there are as many as 8 offences registered against the applicant from the year 2011 onwards. So far as item 3 (C.R.No. 3260/12) is concerned, the applicant is not an accused, but the same is considered for applying MCOC Act

against him, as a member of his syndicate is an accused therein. The details are as under :

Sr. No.	Police Station	C.R. No. along with Sections
1	Khadki	CR/98/11 under sections 324, 323, 506, 34
2	Yerawada	CR/3164/11 under sections 8(c), 21, 29 of NDPS Act
3	Yerawada	CR/3260/12 under sections 8(c), 21, 22 of NDPS Act
4	Khadki	CR/3015/13 under sections 22, 29 of NDPS Act
5	Khadki	CR/3024/13 under sections 8, 20(b) of NDPS Act
6	Yerawada	CR/3036/13 under sections 22, 29 of NDPS Act
7	Khadki	CR/3071/15 under sections 8(b), 22, 29 of NDPS Act
8	Khadki	CR/3022/17 under sections 8(c), 21(b), 22(b), 29 of NDPS Act
9	Khadki	CR/3059/17 under sections 8(c), 21(b), 22(b), 29 of NDPS Act

12. For applying MCOC, as many as 9 cases are taken into consideration against the applicant. Learned Counsel for the applicant also placed emphatic reliance on the decision of the Hon'ble Supreme Court in the case of **Rockysingh Jalindersingh Kalyani Vs. State of Maharashtra dated 03/02/2022 in Appeal No. 176 of 2022**. The said order reads thus :

“ Leave granted.

We have heard learned counsel for the parties.

Learned counsel for the appellant contends that the appellant has been in custody for more than four years and the trial has not commenced. Learned counsel further submits that the appellant is a handicapped person with a Jaipur foot who has lost about 12 kgs of weight in custody with the result that even the Jaipur foot does not fit him appropriately. The charges are relating to the NDPS Act, 1985 and on that account coupled with the Maharashtra Control of Organised Crime Act, 1999 ('MCOC Act').

The counter affidavit appears to be silent on the issue of whether the trial has commenced or not. Learned counsel for the State fairly states that possibly the trial would not have commenced. He, however, opposes the bail application on the ground that the provisions of MCOC Act have been invoked as the appellant was found connected with a syndicate of Aarti Misal, who is stated to be in custody. There is no other case as per the affidavit against the appellant except on old case under Section 307/324 of IPC.

In view of the aforesaid facts and circumstances and looking to the fact that the trial is even yet to commence, the appellant is in custody for four years, the period of custody itself would logically give a break from the syndicate the head of which is in custody, looking at the physical condition of the appellant, we are inclined to grant bail to the appellant on terms and conditions to the satisfaction of the trial court. We are granting the bail to the appellant in the given facts of the case not to be treated as a precedent for the other co-accused.

Apart from any other condition, the appellant will report to local Police Station on alternate Mondays in the forenoon. We make it clear that if the appellant is found indulging in trade of drugs or any other offence is detected against him, the prosecution will be at liberty to move for cancellation of bail of the appellant before the Trial Court itself which would be entitled to cancel the bail in such eventuality.

The criminal appeal stands allowed accordingly."

emphasis supplied

13. The said decision has no application in the present facts, apart from Their Lordships clearly indicating that the bail is granted in the given facts of the case. The said decision cannot also be treated as a precedent.

14. It can not be lost sight of the fact that since registering of the offence in connection with C.R. No. 3059 of 2017, it has been almost 5 years since the applicant is in custody. The trial is even yet to commence. According to learned Counsel for the applicant, except for C.R. No. 3022 of 2017 and 3059 of 2017 registered with Khadki Police Station, the applicant has been acquitted in all other cases. Learned APP, opposing this submission, nonetheless submits that as per her instructions, the applicant has been acquitted in 3 out the 8 cases indicated in the chart. It is therefore undisputed that at least 3 out of 8 cases, the applicant has been acquitted. These 8 cases together with one registered against Jafar Abdul Shaikj (C.R. No. 3260 of Yerawada Police Station where the applicant is not an accused) formed the basis for grant of sanction under MCOC. I may not be understood to have commented on

the merits of the sanction. Suffice it to observe that the applicant is in custody for more than 5 years and at least in 3 of the criminal cases, he has been acquitted. The applicant is almost 61 years of age. It is the contention of learned Counsel that the applicant was not searched in presence of a Magistrate nor any official of the raiding party was a gazetted officer. Prima facie, there appears to be some substance in the submission of the learned Counsel for the applicant. The applicant was found in possession of non commercial quantity of drugs. The charges are relating to the NDPS Act and coupled with the MCOC Act. The distance of time since the applicant is in custody, is another factor why I am inclined to allow this application. There is definately substance in the contention of learned APP that bail cannot be granted to the applicant unless the conditions stipulated in sub-section (4) of section 21 of MCOC Act are satisfied. I have formed a prima facie opinion keeping in mind the circumstances viz. the number of acquittals in criminal cases; the conditions under section 50 of NDPS Act prima facie are not fulfilled; and the period the applicant

has spent in custody which would logically give a break from syndicate of which the applicant is alleged to be the head. It is made clear that these are prima facie observations for considering enlarging the applicant on bail and the trial Court to proceed with the trial on its own merits without being influenced by the observations made in this order.

15. However, while releasing the applicant on bail, it is necessary to impose strict conditions on the applicant as most of the offences which are registered against him are in the area of Khadki and Yerawada which are in Pune district. It is therefore necessary to keep the applicant away from the Pune district during the pendency of the trial. Hence, the following order.

ORDER

(i) The applicant is released on bail in connection with C.R. No. 3059 of 2017 registered with Khadaki Police Station on his furnishing PR bond of Rs.30,000/- with one or more sureties in the like amount.

(ii) The applicant shall remove himself from Pune district

upon being released on bail.

(iii) He shall furnish the residential address of the place where he intends to reside while outside the Pune district to the trial Court as well as Investigating Officer.

(iv) He shall report to the nearest Police Station to the place of his residence while on bail on every Monday between 11.00 a.m. and 1.00 p.m.

(v) It is made clear that if the applicant is found indulging in trade of drugs or any other offence is detected against him, the prosecution will be at liberty to move for cancellation of bail of the applicant before the trial Court itself which would be entitled to cancel the bail in such eventuality.

(vi) The applicant is permitted to enter the Pune district only for the purpose of attending the trial and date so fixed or on any other occasion with the leave of the trial Court.

16. The application is disposed of.

(M. S. KARNIK, J.)