

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.124 OF 2022

Satish Appa Ithape

@ Satish Appa Patil

...Applicant

vs.

The State of Maharashtra

...Respondent

VISHAL
SUBHASH
PAREKAR

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VISHAL SUBHASH
PAREKAR

Date: 2022.07.18
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Mr. Ajinkya Kamble a/w. Mr. Vaibhav Kulkarni and Mr. Ruturaj
Bathe, for the Applicant.

Mrs. J.H. Lohkare, APP, for the State.

CORAM :

N. J. JAMADAR, J.

ORDER RESERVED ON :

JULY 01, 2022

ORDER PRONOUNCED ON :

JULY 18, 2022

P.C.:

1. The applicant/accused No. 8, who is arraigned in C.R. No. 622 of 2016 registered at Yavat police station, Pune for the offences punishable under sections 395, 412, 413, 414 of the Indian Penal Code, 1860 and sections 3(1)(ii), 3(4), 3(5) and 4 of the Maharashtra Control of Organized Crime Act, 1999 (MCOC), has preferred this application to enlarge him on bail.

2. The gravamen of indictment against the applicant and the co-accused is as under:-

The applicant's brother Sachin Ithape, the accused No. 1 is the leader of an organized crime syndicate comprising accused Nos. 1 to

7. They are indulging in continuing unlawful activities within the meaning of MCOC Act, 1999. They commit dacoities armed with deadly weapons and implements of house breaking by night. Accused Nos. 1 to 7 share the stolen property and out of the proceeds of the crime acquired properties.

3. On 10th September, 2016 at about 2 am, accused Nos. 1 to 7 committed dacoity at the District Central Cooperative Bank Limited, at Rahu, Tal. Daund. Dipak Bhalerao, the security guard and his associate Uttam Wagh were threatened on the point of knife. They were assaulted. Their hands and legs were tied. Thereafter, the accused Nos. 1, 2 and 4 to 6 entered the bank by cutting the iron grill of the rear window by means of a gas cutter. The strong room and iron safe were also broken open by the gas cutter. Accused Nos. 1 to 7 decamped with an amount of Rs. 65,57,485/-.

4. Accused Nos. 1 to 7 distributed the stolen property amongst themselves. The amount which had fallen to the share of accused No. 1 was utilized by accused No. 8, the applicant herein, to acquire land bearing Gut No. 203 situated at Saygavhan, Tal. Kannad, Aurangabad jointly with Narayan Jadhav for a consideration of Rs. 4,65,600/-. Mangal Ithape (accused No. 9), the mother of accused

No. 1 had also purchased the house property at Gut No. 388/2B situated at Chalisgaon, Dist. Jalgaon, for Rs. 16,94,931/-. Accused No. 10 Priyanka Lokare, who is the wife of accused No. 2 Dnaneshwar Lokare has purchased the house property at Chalisgaon and an agricultural land at Saygavhan, Tal. Kannad, Dist. Aurangabad from out of the stolen property falling to the share of accused No. 2. The accused Nos. 8 to 10 are thus arraigned for having committed offences punishable under sections 3(5) and 4 of MCOC Act, 1999, besides allegedly being the members of organized crime syndicate and harbouring the members of organized crime syndicate, of which the accused No. 1 is the leader. The applicant came to be arrested on 20th November, 2016. Post completion of investigation, charge-sheet has been lodged.

5. The applicant has preferred this application for bail on the grounds, inter alia, that the applicant had no role in the alleged dacoity. Nor there is any material to show that the applicant is the member of the organized crime syndicate. Not a single crime has been registered against the applicant. Thus, charge under section 3 of MCOC Act, 1999 is wholly unsustainable qua the applicant. It is further asserted that the applicant has been in custody for more than five years. At best, the applicant can be prosecuted for the

offence punishable under section 4 which entails a maximum punishment of ten years. Thus, the applicant deserves to be enlarged on bail on the ground of prolonged incarceration as well.

6. An affidavit, in reply is filed on behalf of the respondents to resist the prayer for bail.

7. I have heard Mr. Ajinkya Kamble, learned counsel for the Applicant and Mrs. Lohkare, learned APP for the State at some length. With the assistance of the learned counsels for the parties, I have perused the report under section 173 of the Code and the documents annexed with it.

8. Mr. Kamble, learned counsel for the applicant, would urge that the applicant deserves to be released on bail both on merits as well as on the ground of parity. Since the charge against the applicant is that of being in possession of property on behalf of accused No. 1, who is alleged to be a gang leader of the organized crime syndicate, at best, the act and conduct of the applicant would fall within the tentacles of section 4 of the MCOC Act. However, by no stretch of imagination, the applicant can be said to be a member of organized crime syndicate. The applicability of section 3 is thus

completely ruled out.

9. It was further submitted that the accused No. 9, mother of accused No. 1, and accused No. 10, the wife of accused No. 2, against whom identical allegations are made, have been released on bail. Therefore, the applicant is entitled to be released on the ground of parity. Attention of the Court was invited to an order passed by the Supreme Court in the case of **Priyanka Dnyaneshwar Lohakare vs. The State of Maharashtra**¹ (accused No. 10) whereby the Supreme Court considering nature of the accusations and period of incarceration directed her release on bail. Attention of the Court was also invited to an order passed by the learned Special Judge, releasing the co-accused Mangal Ithape (accused No. 9) the mother of applicant and accused No.1, placing reliance on the order passed by the Supreme Court in the case of **Priyanka** (supra).

10. The learned APP resisted the prayer for release on bail by strenuously submitting that the role attributed to the applicant/accused No. 8 is not that of an innocent holder of the property of the member of the organized crime syndicate. There is no explanation of the circumstances in which the corpus has been acquired. On the contrary, according to the learned APP, the applicant was privy to

1 Spl.Leave Petn. (Cri) Diary No. 6724/2020, Dt.30/11/2021

the continuing unlawful activities in which the accused No. 1 had been indulging in. The applicant had known that the funds, out of which the property was acquired, were the proceeds of crime. Learned APP banked on the confession made by the applicant recorded under section 18 of the MCOC Act, 1999 to bolster up the submission that the applicant was aware that the accused Nos. 1 to 7 were committing robberies and still harboured accused No. 1 and used the stolen property to acquire the property in his own name.

11. I have given anxious consideration to the submissions canvassed across the bar.

12. To start with, it is necessary to note that the prosecution does not allege that the applicant was one of the dacoits who committed dacoity in question at the District Central Cooperative Bank, Rahu. The prosecution has attributed a specific role of utilizing the stolen property which fell to the share of accused No. 1 to acquire the immovable property as if the acquisitions were from legitimate sources. From the perusal of the statement of the applicant under section 18 of the Act, 1999 also it becomes prima facie clear that the confession can be utilized to the extent of holding the property derived or obtained from commission of an organized crime and

being in possession of property for and on behalf of accused No. 1.

13. In the circumstances of the case, I am impelled to hold that the prosecution may press the charge of harbouring the member of organized crime syndicate punishable under section 3(3) of the MCOC Act, 1999 against the applicant. For that matter, the prosecution may also press the charge for the offence punishable under section 3(3) of being a member of organized crime syndicate. Yet, it is imperative to note that the minimum punishment prescribed for the offences punishable under section 3(3) and 3(4) is imprisonment for a term which shall not be less than 'five years' and for section 3(5), the minimum punishment is imprisonment which shall not be less than 'three years'. Section 4 of MCOC Act, 1999 prescribes punishment which may extend to 'ten years' with a minimum term of three years.

14. Keeping in view the punishment for the offences for which the applicant stands arraigned, the prayer in the instant application is required to be considered. Evidently, the applicant has already undergone the minimum term of imprisonment prescribed for the offences punishable under section 3(3), 3(4) and 3(5) of the MCOC Act, 1999, whereas the applicant has undergone

more than half of the punishment prescribed for the offence punishable under section 4 of the MCOC Act, 1999.

15. Prima facie, there is material to indicate that the applicant has acquired the property, from out of source of funds which appears to be tainted. Would that fall within the dragnet of section 3(5) or section 4 simpliciter, is a matter for evidence and trial. Even if it is assumed that the act would fall within the ambit of section 3(5), the fact that the applicant has already undergone more than the minimum period of imprisonment cannot be lost sight of.

16. The right to speedy trial, in the prosecutions where the special enactments restrict the powers of the Court to grant bail, faces a competing claim of interest of society and security of State. In such prosecutions, if the trials are not concluded expeditiously, the procedure which deprives the personal liberty for an inordinate period is then put to the test of fairness and reasonableness, envisaged by Article 21 of the Constitution. Where the period of incarceration awaiting adjudication of guilt becomes unduly long, the right to life and the protection of fair and reasonable procedure, envisaged by Article 21, are jeopardized.

17. In the case of **Saheen Welfare Association vs. Union of India**² the Supreme Court considered the conflicting claims of personal liberty emanating from Article 21 and protection of society from the terrorist acts, which the Terrorist and Disruptive Activities (Prevention) Act, 1987 professed to achieve. The Supreme Court reconciled the conflicting claims of individual liberty and the interest of the community by issuing directions for release of the under trial prisoners, who had suffered long incarceration, depending upon the gravity of the charges. The observations of the Supreme Court in para 9 to 11 and 13 to 14 are material and hence extracted below:

9] The petition thus poses the problem of reconciling conflicting claims of individual liberty versus the right of the community and the nation to safety and protection from terrorism and disruptive activities. While it is essential that innocent people should be protected from terrorists and disruptionists, it is equally necessary that terrorists and disruptionists are speedily tried and punished. In fact the protection to innocent civilians is dependent on such speedy trial and punishment. The conflict is generated on account of the gross delay in the trial of such persons. This delay may contribute to absence of proper evidence at the trial so that the really guilty may have to be ultimately acquitted. It also causes irreparable damage to innocent persons who may have been wrongly accused of the crime and are ultimately acquitted, but who remain in jail for a long period pending trial because of the stringent provisions regarding bail under TADA. They suffer severe hardship and their families may be ruined.

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

2 1996 SCC (2) 61.

granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh's case (supra), 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.

11] These competing claims can be reconciled by taking a pragmatic approach.

.....

13] For the purpose of grant of bail to TADA detentes, we divide the under trials into three classes, namely, (a) hardcore under trials whose release would prejudice the prosecution case and whose liberty may prove to be a menace to society in general arid to the complainant and prosecution witnesses in particular; (b) other undertrials whose overt acts or involvement directly attract [Sec.3](#) and/or 4 of the TADA Act; (c) under trials who are roped in, not because of any activity directly attracting [Sec.3](#) and A, but by virtue of [Sec.120B](#) or 147, [I.P.C.](#), and; (d) those under trials who were found possessing Incriminating articles in notified areas & are booked under Section 5 of TADA.

14] Ordinarily, it is true that the provisions of Sections 20(8) and 20(9) of TADA would apply to all the aforesaid classes. But while adopting a pragmatic and just approach, no one can dispute the fact that all of them cannot be dealt with by the same yardstick. Different approaches would be justified on the basis of the gravity or the charges. Adopting this approach we are of the opinion that undertrials falling within group (a) cannot receive liberal treatment. Cases of undertrials falling in group (b) would have to be differently dealt within. in that, if they have been in prison for five years or more and their trial is not likely to be completed within the next six months, they can be released on bail unless the court comes to the conclusion that their antecedents are such that releasing them may be harmful to the lives of the complainant the family members of the complainant, or witnesses. Cases of undertrials falling in groups (c) and (d) can be dealt with leniently and they can be released if they have been in jail for three years and two years respectively.....”

18. The aforesaid judgment was referred with approval, by the Supreme Court in the case of **Union of India v/s. K.A.Najeeb**³ wherein the Supreme Court while emphasizing that under trials cannot be indefinitely detained pending trial, expounded in clear terms that once it is found that timely conclusion of trial would not be possible and accused has suffered incarceration for a significant period of time, the Court would be obligated to enlarge the accused on bail. The observations in paragraph 15 and 17 are instructive and thus extracted below:

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](#), it was held that under trials 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, 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, 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 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 Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to

3 (2021) 3 SCC 713.

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 prescribed sentence. Such approach would safeguard against possibility of provisions like [Sec.43D](#) (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

(emphasis supplied)

19. The Supreme Court has thus expounded the legal position that the statutory restriction like section 43-D(5) of the UAPA per se does not operate as an impediment on the powers of the constitutional Court to grant bail, if a case of infringement of the constitutional guarantee of protection of life and personal liberty is made out, and the rigours of such statutory restriction would melt down in the face of long incarceration of an under trial prisoner. In such a situation, the prayer of entitlement for bail on the count of prolonged delay in conclusion of trial is required to be appreciated in the backdrop of period of incarceration, the prospect of completion of trial in a reasonable time, the gravity of the charge and attendant circumstances.

20. On the aspect of parity, it may be advantageous to extract the order passed by the Supreme Court in the case of **Priyanka** (supra),

“The husband of the petitioner is alleged to be a gangster and several cases including under the Maharashtra Control of Organized Crimes Act (MCOCA) are registered/pending against him.

One of the such cases i.e. First Information Report No. 622 dated 10-09-2016 pertains to a bank robbery in which Rs. 65,57,485/- were stolen. Though the petitioner was not initially named as an accused but later on she was implicated, as during the course of investigation, it allegedly transpired that she has spent a part of the ill-gotten money in buying immovable properties. The petitioner was consequently arrested on 20-11-2016. She is thus in custody for over 5 years along with a newly born baby girl.

Having heard learned counsel appearing for the State of Maharashtra and carefully perusing the material available on record, but without expressing any opinion on the allegations levelled against the petitioner, we deem it appropriate to release her on bail, subject to such terms as may be imposed by the Trial Court.”

21. Following the aforesaid order, the learned Special Judge was persuaded to release the co-accused No. 9 Mangal Ithape, the mother of the applicant and accused No. 1 by observing as under:-

13. As the role of this accused and that of co-accused Priyanka Lokare is one and the same, in my view the principle of parity is applicable. It is also to be noted that accused is behind the bars since more than 5 years and reported to be HIV positive. The learned Special Public Prosecutor has failed to point out as to how the principle of parity is not applicable.

22. The personal attributes of Priyanka and Mangal vary. They are women. Priyanka was incarcerated along with new born baby girl. Mangal was reported to be HIV positive. Such factors, which are essentially personal to Priyanka and Mangal, may not be available in the case of the applicant. However, the twin underlying facts remains same. One, the role attributed to the applicant is of

holding property obtained out of organized crime or acquiring property from proceeds of crime. Two, incarceration for more than five years. In fact, the applicant is in custody for almost five years and eight months. The element of parity, in my considered view, thus comes into play.

23. The conspectus of the aforesaid discussion is that the applicant deserves to be released on bail.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant Satish Appa Ithape @ Satish Appa Patil be released on bail in connection with C.R. No. 622 of 2016 registered at Yavat police station, Pune, on furnishing a P.R. Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount, to the satisfaction of the learned Special Judge.
- 3] The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.
- 4] The applicant shall furnish his permanent address and contact details to the Inspector of Police, Yavat police station and

intimate the change, if any.

5] The applicant shall regularly attend the proceedings before the learned Special Judge.

6] By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused.

All concerned to act on an authenticated copy of this order.

(N. J. JAMADAR, J.)