

Darshan Patil

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

BAIL APPLICATION NO. 172 OF 2021

Musa Annu Sayyed	..Applicant
vs.	
The State of Maharashtra	..Respondent

Ms. Dhanashree M. Lad a/w Abdul Aziz Khan for applicant.
Ms. P.N. Dabholkar, APP for State
Mr. Kamlakar K. Sontakke, API, Vashi Police Station, Navi
Mumbai.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 25, 2022

P.C. :

1. This is an application for bail for the offence punishable under Sections 392, 414, 401 and 34 of Indian Penal Code (hereafter 'IPC', for short) along with Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereafter 'MCOCA', for short), registered vide C.R. No. 488 of 2014 lodged with Vashi Police Station on 04/12/2014. The applicant came to be arrested on 21/09/2015. The applicant is in custody for more than

seven (7) years and four (4) months. The charge-sheet was filed on 23/11/2015. The trial has not made any progress. Apart from other grounds, long incarceration and the right for the speedy trial are pleaded by the learned counsel for the applicant to secure his release on bail.

2. At the relevant time when the offence was committed, the applicant was around twenty (20) years of age. It is submitted that a co-accused Ali Abbas Firoz Sayyed @ Ali has been released on bail by the Trial Court by the order dated 05/03/2018.

3. It is prosecution case that on 04/12/2014 at about 20:20 hours near V.C.S in front of Circle Hotel, Vashi, Navi Mumbai, the main accused Sadik Ali Yusuf Ali Sayyed (Gang leader) and the applicant were on one motorcycle whereas Ali Abbas and Kakoo were on the other motorcycle. The accused Sadik Ali Yusuf Ali Sayyed snatched a golden chain from the neck of the complainant. At that time, Ali Abbas and Kakoo were on watch. Sadik Ali Yusuf Ali Sayyed is the head of the organised crime syndicate whereas the applicant along with others are the members of the said

gang. During the investigation, it was found that the accused persons have committed offences for pecuniary gain by their organised crime syndicate headed by the Sadik Ali Yusuf Ali Sayyed. After invoking the provisions of the MCOCA and after seeking previous sanctions, charge-sheet under Sections 392, 414, 401 and 34 of IPC along with Sections 3(1)(ii), 3(2), 3(4) of MCOCA was filed.

4. It is the submission of the learned counsel appearing for the applicant that on the basis of the confessional statement of one accused – Jaffer Irani, who was arrested in 2015, the applicant was implicated. The confessional statement of the applicant came to be recorded on 25/09/2015 under Section 18 of the MCOCA wherein he confessed to and narrated the entire incident by assigning specific roles to all the accused persons including himself.

5. Learned counsel for the applicant has further pointed out that applicant's father has expired in August-2022.

6. Learned APP invited my attention to the affidavit in reply filed on behalf of the investigating agency and strongly opposed the grant of bail. As per the crime chart

annexed to the affidavit in reply, it reveals that out of 44 offences registered under Section 392 of IPC against the gang, during the period 2014-2015, the applicant is actually involved with the gang in 17 offences.

7. I need to make a reference to the decision of this Court in **Ajit Bhagwan Tiwde Vs. The State of Maharashtra**¹ to seek guidance for deciding this application. His Lordship referred to the law laid down by the Supreme Court, on the aspect of the Right of the Speedy Trial which flows from Right to Life and Right to Liberty under Article 21 of the Constitution of India. Paragraphs No. 13 to 18 of the decision reads thus:

"13. In the case of Shaheen Welfare Association Vs. Union of India and others (1996) 2 SCC 616, it was observed by the Supreme Court that it was necessary to grant relief to those persons who have been deprived of their personal liberty for a considerable length of time without any prospect of trial being concluded in the near future. Undoubtedly, the safety of the community and of the nation needs to be safeguarded looking to the nature of the offences these undertrials have been charged with. But the ultimate justification for such deprivation of liberty pending trial can only be their being found guilty of the offences for which they have been charged. If such a finding is not likely to be

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arrived at within a reasonable time some relief becomes necessary. The Court was dealing with the cases registered under the provisions of TADA Act. The Court was conscious of the fact that there is embargo for release of prisoners prosecuted for the offences of TADA u/s.20(8) of the said Act. The Supreme Court divided the undertrial prisoners under TADA based on their role/hard core criminals into various classes and by adopting pragmatic and just approach relief was directed to be granted considering gravity of the charges. The Courts were given discretion to consider grant/refusal of bail based on antecedents and on conclusion that there is no likelihood of harm to lives of complainant and others in the event of their release.

14. In the case of Sanjay Chandra Vs. CBI AIR 2012 SC 830, it was observed that object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of

giving him a taste of imprisonment as a lesson. The grant or denial is regulated to a large extent by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.

15. In the case of Thana Singh Vs. Central Bureau of Narcotics (2013) 2 SCC 596, it was observed that the accused was languishing in prison for more than 12 years and awaiting his trial for the offences under the provisions of NDPS Act. He was consistently denied bail. The maximum punishment for the offence was 20 years and he remained in detention for the period exceeding one half of the maximum period of imprisonment. The Court issued directions on various issues, which would be of assistance to conclude trials pending in Courts expeditiously.

16. In the case of Hussain and another Vs. Union of India (2017) 5 SCC 702, it was observed that the Supreme Court has given directions in number of cases about speedy conclusion of trials. Speedy trial is part of reasonable, fair and just procedure guaranteed under Article 21 of Constitution of India. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot

be unduly long. While a person in custody for a grave offence may not be released if trial is delayed, trial has to be expedited or bail has to be granted in such cases. The Court issued directions and one of them was, as a supplement to Section 436-A but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence likely to be awarded if conviction is recorded, such undertrial must be released on personal bond. Such an assessment must be made by the Trial Courts concerned from time to time. Timely delivery of justice is a part of human rights. Denial of speedy justice is a threat to public confidence in the administration of justice.

17. In Abdul Rehman Antulay Vs. R.R.Nayak (1992) 1-SCC-225, while holding that speedy trial at all stages is part of right under Article 21. In the case of Hussainara Khatoon Vs. State of Bihar (1995)5-SCC-326, it was observed that general orders for release of undertrials without reference to specific fact situations in different cases may prove to be hazardous. While there can be no doubt that undertrial prisoners should not languish in jails on account of refusal to enlarge them on bail, for want of their capacity to furnish bail, these are matters to be dealt with on case to case basis keeping in mind guidelines laid down by Court. Sympathy for undertrials who are in jail for long time on account of the pendency of cases, has to be balanced having regard to the impact of crime.

18. In Vivek Kumar Vs. State of U.P. (2000) 9-SCC-443, bail was granted to accused by Supreme Court on the ground that it is quite a long period that he is in custody. In Babba Vs. State of Maharashtra (2005)11-SCC-569, the accused was in custody for a long period for offence under TADA Act.

In *Paramjit Singh Vs. State (NCT of Delhi)*, the Supreme Court granted bail. The accused was prosecuted under TADA Act. Earlier the application was rejected and trial was expedited. There was no progress in trial. In the case of *Angela Sontakke Vs. State of Maharashtra (supra)*, the Supreme Court granted bail to the accused facing prosecution under UAPA Act on the ground that accused is in custody for five years. In the case of *Chintan Vidyasagar Upadhyay (Supra)*, the Supreme Court granted bail to the accused charged for the offence under Section 302 of IPC which the trial was in progress, 28 witnesses were examined and 12 more were to be examined on the ground that accused was in custody for 6 years.”

8. His Lordship in paragraph No. 19 observed that “the settled principle of law is that prolonged custody affects fundamental rights under Article 21 of the 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 the Constitution of India”.

9. The decision in **Ajit Bhagwan Tiwde** (supra) then goes on to consider the aspect of prolonged custody in the context of restrictions for granting bail in relation to some offences under special legislation, Section 21(4) of the

MCOCA being one of them. After referring to the observations made by the Supreme Court in the case of **Union of India Vs. K.A. Najeeb**², His Lordship then went on to notice the observations of the Supreme Court in the case of **Ranjitsingh Sharma Vs. State of Maharashtra and another**³ in paragraphs No. 25 and 26. Paragraphs no. 25 and 26 reads thus:

"25. Although it is not necessary to go deep into the restrictions like Section 37 of NDPS Act, Section 20(8) of TADA Act and Section 21(4) of MCOC act, since the right to speedy trial is supreme, it is required to be noted that above provisions carrying embargo for grant of bail under TADA Act, NDPS Act and MCOC Act are pari materia. It is true there is distinction in embargo for bail, qua UAPA act. However, that should not be hurdle in granting bail on the ground of infringement of Article 21 of Constitution of India. No decision has been brought to notice of the Court wherein bail has been refused by Supreme Court, in spite of accused being in prolonged custody on the basis of such restrictions. It is also pertinent to note the extent to which such rigours can be interpreted while granting bail. In the case of Ranjitsingh Sharma Vs. State of Maharashtra and another 2005-ALL.MR (Cri)-1538-(SC), it is observed in quoted paragraphs as follows :

"28. Section 21 provides for modified application of certain provisions of the Code of Criminal Procedure, sub-

2 (2021) 3-SCC-713

3 2005-ALL.MR (Cri)-1538-(SC)

section (4) whereof is as under:

(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless -

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

45. The Act is deterrent in nature. It provides for deterrent punishment. It envisages three to ten years of imprisonment and may extend to life imprisonment. Death penalty can also be imposed if somebody commits a murder. Similarly, fines ranging between three to ten lakhs can be imposed.

46. Presumption of innocence is a human right (See Narendra Singh and another Vs. State of MP (2004)10-SCC-699:2004 ALL MR (Cri)2557 (SC). Para31). Article 21 in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. Sub-section (4) of Section 21 must be interpreted keeping in view the aforementioned salutary principles. Giving an opportunity to the public prosecutor to oppose an application for release of an accused appears to be reasonable restriction but Clause (b) of sub-section (4) of Section 21 must be given a proper meaning.

47. Does this statute require that before a person is released on bail, the Court, albeit prima facie, must come to the conclusion that he is not guilty of such offence? Is it necessary for the Court to record such a finding ? Would there be any machinery available to the Court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever ?

48. Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on records only for grant of bail and for no other purpose.

49. We are furthermore of the opinion that the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the Court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the Court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organized crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was

possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The Court may in a situation of this nature keep in mind broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision.

55. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the Court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the Legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the Court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in future must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is

alleged to have committed the offence.”

26. Thus, embargo under the provisions of Special Acts shall not be an impediment in grant of bail by this Court on the ground of incarceration of accused in custody for a long time, more particularly in the light of various decisions of Supreme Court.”

Having noticed thus, I draw support from the decision of this Court in **Ajit Bhagwan Tiwde** (supra) for considering the issue involved in the present application whether the incarceration in custody for long period of trial or completion of trial affects the personal liberty guaranteed under Article 21 of the Constitution of India, in the context of restrictions for granting bail in relation to some offences under special legislations like MCOCA.

10. I must also bear in mind the observations of this Court in **Ajit Bhagwan Tiwde** (supra) in paragraph No. 31 reading thus:

“In the light of observations of Supreme Court and this Court as stated above, the Court has to perform balancing act. The sympathy for undertrials who are in custody has to be balanced with gravity/magnitude of crime, likelihood of threat to witnesses. The analysis may be based on facts of each case.”

11. Having analysed the law laid down in regard to long incarceration of the undertrials in custody, in the context of stringent provisions of the MCOCA for the purpose of grant of bail, I am of the opinion that in the facts of the present case, the applicant having spent seven years and four months in custody, deserves to be released on bail. The applicant is not the gang leader. There was no recovery from the applicant. Further, there is no possibility of the trial commencing and concluding in the near future. The co-accused of the applicant has been released on bail. Though there are criminal antecedents which resulted in the grant of sanction for the prosecution under the MCOCA, I find that having regard to the period spent by the applicant in custody, the applicant should not be deprived of his liberty on this ground alone. Hence the following order.

ORDER

(a) The applicant - Musa Annu Sayyed, shall be released on bail in connection with C.R. No. 488 of 2014 registered with Vashi Police Station on furnishing P.R. Bond of Rs. 50,000/- with one or

more sureties of the like amount.

(b) On being released, the applicant shall immediately remove himself from the jurisdiction of Thane District and shall not enter Thane District except on the date fixed by the Trial Court.

(c) The applicant shall furnish details of his residential address to the Trial Court as well as the concerned police station and shall report to the nearest police station at the place of his residence, outside Thane District, on every Friday between 4.00 p.m. and 6.00 p.m.

(d) The applicant shall not leave India without prior permission of the Special Court, under the MCOCA.

(e) In the event, the applicant has passport, the same shall be deposited with the Trial Court. If he does not possess any passport, he shall file an affidavit in that regard before the Trial Court.

(f) The applicant shall attend the Trial Court regularly on the date of hearing unless exempted

by the Court.

(g) The applicant shall not tamper with the evidence nor threaten any prosecution witness.

12. The application is disposed of.

(M. S. KARNIK, J.)