

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

BAIL APPLICATION NO.186 OF 2022

Ajit @ Sameer Dadasaheb Chandugde Applicant.
V/s
The State of Maharashtra Respondent.

Mr. Rahul K. Dhaygude for the Applicant.
Ms. Veera Shinde, APP for the Respondent-State

CORAM : NITIN W. SAMBRE, J.

DATED : 19th JULY, 2022

P.C.:

1. Heard.
2. The applicant / accused is facing prosecution for an offence punishable under section 395, 120B of IPC read with section 3(1) (ii), 3(2), 3(4) of the MCOCA Act.
3. The prosecution case, in brief is as under.
4. The applicant, in connivance with other co-accused is involved in criminal conspiracy and committed an offence in question by removing cash from the office of courier company. After his arrest on 08.02.2016, the applicant was chargesheeted in the aforesaid crimes and he is seeking regular bail on the following grounds:
 - a. That the applicant has suffered incarceration for a

period of more than 6 years.

b. The other two offences registered against him for the offence punishable u/s. 326 of IPC in the year 2013 and 2015. He is already acquitted of the offence punishable u/s. 326 of IPC registered against him in the year 2013 and 2015.

c. Even if the Applicant is identified in the test identification parade, the fact that all the accused persons were kept together in the lock-up including witnesses has apparently exposed identity of the applicant to the witnesses.

d. Though the trial has commenced, however, in last about 6 years the same has not advanced.

5. The learned APP while opposing the prayer would invite attention of this Court to the order dated 18/01/2019 whereby prayer for grant of bail was withdrawn. According to her, the charge is already framed and the prosecution will be examining around 23 witnesses. She would further invite attention of this Court to the nature of recovery from the present applicant viz. cash and gold, the identification of the applicant in the test identification parade, the statement of the witnesses recorded under section 164 of the Cr.P.C. so also the statement recorded

under section 162 of the Cr.P.C

6. According to her, the cumulative effect of the evidence which is collected against the applicant primarily shows his active involvement in the serious offences punishable under MCOCA Act. She also would claim that the Applicant's criminal history speaks of his intention to commit the crime and that being so this Court should reject his prayer for grant of bail.

7. I have appreciated the aforesaid submissions.

8. After the arrest of the applicant on 08/02/2016, the charges were framed against him on 27/12/2019. After the trial has commenced, the fact remains that for last 3 years there is no progress in the trial and as such the applicant as on date has suffered incarceration for a period of more than 6 years.

9. Though the learned APP is justified in strenuously claiming that there is discovery under section 27 of the Evidence Act and this confessional statement of the co-accused under the provisions of MCOCA Act binds the applicant, however, this Court is required to be sensitive to the nature of attributions against the applicant, as were noticed during the investigation.

10. The recovery of the amount & gold ornaments cannot be linked to the money received in the offence as no specific

material to that effect is available on record but for the statement of the salesman of the jewelry shop.

11. As regards test identification parade is concerned, the statement of the witnesses recorded under section 164 particularly that of Mangesh categorically speaks that all the accused including witnesses were detained in the crime in question in the police station during the investigation for a period of almost 8 to 9 days. As such, the test identification parade conducted by the respondents appears to be under cloud.

12. In the aforesaid background, in my opinion, case for bail is made out. As such, in C.R. No. 40 of 2016 registered with Khadak Police Station punishable under 395, 120B of IPC read with section 3(1)(ii), 3(2), 3(4) of the MCOCA Act, the applicant is directed to be released on bail on executing of PR bond of Rs.2.00 lacs (Rs. two lacs only) with one or two sureties in the like amount.

13. Every fortnight the applicant shall report to Faraskhana Police Station of Pune City which shall maintain appropriate records of the same.

14. The applicant shall not tamper with the evidence or influence the witnesses.

15. More than one consecutive absence of the applicant in the

special Court, will entail the special court to take out proceedings for cancellation of the bail of the applicant for jumping the conditions of the bail as it is assured that the applicant shall be attending the trial regularly.

16. The applicant shall not leave the jurisdiction of Pune District without the permission from the Special Court taking up the trial till the conclusion of the trial.

17. The bail application stands allowed in the above terms.

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(NITIN W. SAMBRE, J.)