

PMB

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

**BAIL APPLICATION NO.379 OF 2021
WITH
INTERIM APPLICATION NO.3495 OF 2022**

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RAJU NARAYAN SHETTY ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Mr. Deepak Gautam for applicant.

Ms. A. A. Takalkar, APP for State.

Mr. S. S. Sakhare, PSI, Ganeshpuri Police Station.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 30, 2022.

P.C. :

1. Heard learned counsel for the applicant and learned APP.

2. The applicant was arrested on 14/12/2017 for the incident which took place on 22/07/2017 in respect of C.R. No.I-208 of 2017 for an offence punishable under Sections 307, 341, 395, 397, 120-B of the Indian Penal Code, 1860, under Sections 3 and 25(C) of the Arms Act, 1959, Section 135 of Maharashtra Police Act and during the course of investigation Section 3(1)(ii), 3(2) and 3(4) of the

Maharashtra Control of Organised Crime Act, 1999 was applied.

3. It is the contention of learned counsel for the applicant that the applicant is in incarceration for more than 5 years. Long incarceration along with the circumstance that there is no possibility of trial commencing any time soon in near future is the ground on which bail is applied for. The applicant is the original accused No.3. Learned counsel for the applicant relied upon the orders passed by the Sessions Court granting bail to the two co-accused viz. accused No.2- Kailas Pundalik Ghodvinde and accused No.9- Bhalchandra Vasant Jadhav. The accused No.9-Bhalchandra Vasant Jadhav has been released on bail on merits as well as after taking into consideration that he is in custody for more than 4 years and 6 months. So far as Kailas Pundalik Ghodvinde, that is, accused No.2 is concerned, he has been released on bail by the Sessions Court on the ground of long incarceration.

4. Learned APP on instructions submits that for the very same offence with which the accused No.2-Kailas and

accused No.9-Bhalchandra is charged with, the applicant is also implicated. The relevant paragraphs of the order dated 16/09/2022 of the Sessions Court with respect to the accused No.2-Kailas, are reproduced as under :-

"7. At the outset I would like to mention that for organised crime there must be continuing unlawful activity undertaken either singly or jointly as a member of organised crime syndicate or on behalf of such syndicate in respect of which more than one charge sheets have been filed. While perusing chart of crimes against the applicant I find Crime at Serial Nos.1 to 3 of Ganeshpuri Police Station and Manpada Police Station are body offences and these offences do not show that they were committed for pecuniary benefits or gaining undue or other advantage for himself or any other person. So far rest of the offences in chart at Serial No.4 & 5 are concerned, they are registered after registering of offences under the provisions of MCOC Act. Needless to say present Crime No.208/2017 registered before Ganeshpuri Police Station on 23.07.2017 against the unknown persons. It is specific to note that Crime No.236/2017 and Crime No.221/2017 were registered before Ganeshpuri and Wada Police Stations on 22.10.2015 and 11.12.2017 respectively for the offences under Section 394 of I.P.C. and under Section 3, 25 of Arms Act. Needless to say the above referred crimes were registered subsequent to the registration of offences under the provisions of MCOC Act.

9. Further, the chart of crimes submitted by prosecution vividly show no any offences were registered against him for getting pecuniary benefits or gaining undue economic or other advantage for himself or any other persons. Though it is shown offences under Section 394 of I.P.C. were registered

against the applicant but they were subsequent offences after registration of present crime. Therefore, I am rather doubtful about the attracting of provision under the MCOC Act.

10. Apart from above considerations it cannot be ignored that the applicant is in jail since last five years. It is very much specific to note that yet the charge is not framed against him and others. There is list of more than 107 witnesses to be examined by the prosecution. Certainly, it may take a considerable period for the recording of evidence of the witnesses. Considering huge pendency of the cases, particularly, due to COVID pandemic, the trial is not likely to be commenced in near future.

11. In **Petition (s) for Special Leave to Appeal (Crl.) No(s).1627/2022 (Indrani Pratim Mukerjea Vs. Central Bureau of Investigation & Anr.)**, the Hon'ble Apex Court, by taking note of the long incarceration of the applicant and without commenting on the merits of the case, specifically recorded that, either it would be detrimental to the interest of the prosecution or the defence, but the factum of long incarceration of 6 years, coupled with ½ the period likely to be consumed in conclusion of the trial was held to be a factor, to release her on bail. In the wake of the long incarceration of the applicant with the likelihood of the time-line for conclusion of trial, the applicant was held to be entitled for bail. In **Bail Application No.33/2022** decided on 29.07.2022 [**Anil Shankar Patil Vs. The State of Maharashtra**], The Hon'ble Bombay High Court held that "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". Similarly, in **Bail Application No.68/2022 Shyamwar Pinturam Rai Vs. Central Bureau of Investigation, Special Crime-1 & Anr.**, the Hon'ble Bombay High Court was also pleased to consider long

incarceration of the applicant and the time which would require for the disposal of case. The Court granted him bail without commencing upon the merits of the case. In a identical matter, while disposing Criminal Bail Application No.107/2014 dated 23.07.2014, the Hon'ble High Court observed that the long incarceration of applicant in jail and likelihood of delay in trial. It, therefore was pleased to enlarge him on bail.

12. On going through the provisions laid down in MCOC Act and material on record, I am of the view that the applicant is not guilty of offence under MCOC Act. Further, it is not likely to commit any offence while on bail. So, I pass following order :-

ORDER

1. Application is allowed.
2. The applicant Kailas Pundalik Ghodvinde be released on bail on furnishing P.R. and S.B. of Rs.1,00,000/- (Rupees One Lakh only) with one or more sureties of like amount in connection with Crime I-208/2017 for the offences punishable under Section 307, 341, 395, 397, 120-B of Indian Penal Code, under Section 3, 25(C) of Arms Act, under Section 135 of Maharashtra Police Act and under Section 3(1) (2), 3(2), 3(4) of Maharashtra Control of Organised Crime Act registered before Ganeshpuri Police Station.
3. He shall attend the Ganeshpuri Police Station on every 15th of month until the conclusion of trial.
4. He shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court.
5. He shall not leave India without the previous permission of the Court.
6. Application stands disposed of."

5. Therefore, on the ground of parity as well as on the ground that the applicant has been in custody for more than 5 years and in view of the long incarceration, the applicant deserves to be released on bail. In paragraph 10, the Sessions Court has recorded that as yet the charge is not framed against him and others. There is a list of more than 107 witnesses to be examined by the prosecution. The Sessions Court has observed that the trial is not likely to be commenced in near future. The applicant therefore deserves to be released on bail. Hence, the following order :-

ORDER

- (i) Application is allowed.
- (ii) The applicant-Raju Narayan Shetty be released on bail on furnishing P.R. Bond and S.B. of Rs.1,00,000/- with one or more sureties of like amount in connection with C.R. No.I-208 of 2017 for the for the offences punishable under Section 307, 341, 395, 397, 120-B of Indian Penal Code, under Section 3, 25(C) of Arms Act, under Section 135 of Maharashtra Police Act and under Section 3(1)(2), 3(2), 3(4) of Maharashtra Control of Organised Crime Act registered before Ganeshpuri Police Station.

(iii) The applicant shall attend the Ganeshpuri Police Station on every 15th of month until the conclusion of trial.

(iv) The applicant shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court.

(v) The applicant shall handover his passport, if any, before the trial Court.

6. The Bail Application is disposed of.

7. The Interim Application is also disposed of.

(M. S. KARNIK, J.)