IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1192/2021

GANESH MOHAN VISHWAKARMA ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Ms. A. P. Madhuri a/w. Mr. Prithviraj Rathod for applicant.
Ms. A. A. Takalkar, APP for State.
Mr. Gurav, API, NRI Sagari Police Station.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 20, 2022.

P.C. :

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

2. This is an application for bail in connection with the C.R.No.I-281/2016 registered with the NRI Sagari Police Station for the offence punishable under Sections 395, 397, 452, 120-B, 412 read with 34 of the Indian Penal Code, 1860 (hereafter 'IPC' for short) read with Sections 3, 25 of the Indian Arms Act read with Sections 3(1)(ii),3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereafter 'MCOC Act' for short).

3. The applicant was arrested on January 16, 2016 in C.R.No.I-281/2016 on the basis of the complaint by Mr. Prakashsingh Vijaysingh Jala, cook of the bungalow wherein the offence was committed. The applicant is the original accused no.1. So far as the IPC offences are concerned, there are in all 12 accused. The accused no.3 is supposed to be the main accused. It is alleged that the dacoity/robbery was committed by the accused in the house. It is the prosecution case that the applicant was one who supplied the information that at the relevant time only the cook is available in the house as the owner and other family members had gone out for work. The applicant was working as a gardener. Substantial cash and jewellery was looted. The provisions of MCOC Act came to be invoked against the applicant and other accused.

4. It is alleged that the applicant is one of the member of the organised crime syndicate and along with other members hatched the conspiracy to commit dacoity/robbery. After following the prescribed procedure, the Commissioner of Police, Navi Mumbai, had given sanction under Section 23(2) of the MCOC Act dated April 26, 2017. The charge-sheet came to be filed before the Special Court against the applicant and other six arrested accused on April 29, 2017 vide Special Case No.11/2017.

5. Though it is stated in the affidavit-in-reply of the prosecution that the applicant was arrested on February 27, 2017, the correct date of the arrest of the applicant is December 17, 2016. In the affidavit-in-reply it is stated that one Vinod that is accused no.3 is a past history-sheeter and as many as 16 offences are registered against him. Learned APP vehemently submitted that the applicant was actively involved as a key member in the offence along with other co-accused persons with the sole intention of gaining illegal pecuniary benefits by use of violence or threat of violence or intimidation or coercion or by other unlawful means and they further continued the commission of the offences against human body and property. It is alleged that the applicant is a member of the organised crime syndicate. Learned APP relied upon the decision of the Supreme Court in **Kavitha Lankesh vs. State of Karnataka & Ors.**[1] and

1 AIR 2021 SC 5113

the decision of this Court in **Govind Sakharam Ubhe vs. State of Maharashtra**[2].

6. The main ground on which I am inclined to consider the release of this applicant on bail, in the facts of the present case, is long incarceration. The applicant is in custody for more than six years. So far as the IPC offence is concerned, in which the applicant has been arraigned as an accused, it is alleged that it is the applicant who has informed the other accused as regards the timing during which the owner and his family members are not present in the house which facilitated the dacoity/robbery. Learned APP submitted that the charge has been framed and three witnesses have been examined. In her submission, around 17 more witnesses are yet to be examined, therefore, the trial is likely to conclude within a period of six months.

7. In my opinion, having regard to the fact that the applicant is in custody for more than six years and the possibility of the trial concluding any time soon appearing to be distant, the applicant deserves to be released on bail.

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8. Another circumstance which weighed with me is that this was the first IPC offence registered against the applicant. The trial Court will obviously be guided by the decision in **Kavitha Lankesh** (supra) and **Govind Sakharam Ubhe** (supra). Apart from the ground of long incarceration, I also draw support from the decision of the Supreme Court in **Mohamad Iliyas Mohamad Bilal Kapadiya vs. The State of Gujarat**[3]. I may usefully reproduce the relevant portion of the order of Their Lordships holding thus: -

> "Undisputedly, the perusal of the Chart would reveal that only one offence, i.e., FIR No. 64 of 2021 would show that it has been committed by seven accused out of which two are the members of the syndicate. In respect of offences at Serial Nos. 1 to 4 in the Chart, no members of the syndicate are arrayed as accused.
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> We are of the prima facie view that for invoking the provisions of the GCTOC Act, the following conditions will have to be fulfilled:
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> (i) that such an activity should be prohibited by law for the time being in force;
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> (ii) that such an activity is a congnizable offence

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punishable with imprisonment of three years or more;

(iii) that such an activity is undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate;

(iv) that in respect of such an activity more than one charge-sheet must have been filed before a competent Court; and

(v) that the charge-sheet must have been filed within a preceding period of ten years; and

(vi) that the Courts have taken cognizance of such offences.

Undisputedly, in the present case only one charge-sheet was filed in respect of an activity which can be said to have been undertaken by the petitioner/applicant as a member of an organised crime syndicate on behalf of such syndicate.

Taking into consideration this aspect of the matter and further that the petitioner/applicant has already been directed to be released on bail in respect of crime registered at Serial Nos. 1 to 5, we are inclined to allow the present Special Leave petition.”

9. Perusal of the affidavit filed on behalf of the prosecution would reveal that only one charge-sheet was filed in respect of an activity which can be said to have been undertaken by the applicant as a member of the organised crime syndicate on behalf of the syndicate.

10. Undoubtedly, there are several charge-sheets and several cases pending against the accused no.3. The applicant is not implicated in any of the crime. Against the applicant there is only charge-sheet filed in respect of the IPC offence. There are no materials to show that the applicant is involved in any of the 16 offences which are mentioned at page 72 of the affidavit-in-reply filed by the prosecution. Apart from this, there are no criminal antecedents reported against the applicant. Hence the following order.

O R D E R

(a) The application is allowed.

(b) The applicant-Ganesh Mohan Vishwakarma in connection with C.R.No.I-281/2016 registered with the NRI Sagari Police Station, shall be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or two sureties in the like amount.

(c) The applicant shall report to the Investigating Officer of the concerned police station once in a month every Monday, between 1.00 p.m. and 3.00 p.m.

(d) The applicant shall not enter the area of Greater Mumbai, Thane District and Navi Mumbai except for attending trial Court dates and for reporting to the Investigating Officer.

(e) 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 the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(f) On being released on bail, the applicant shall furnish his contact number and residential address in respect of the address where he proposes to reside when out of the Greater Mumbai, Thane District and Navi Mumbai, to the Investigating Officer and shall keep him updated, in case there is any change.

11. The application is disposed of.

(M. S. KARNIK, J.)