

PMB

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

BAIL APPLICATION NO.1264 OF 2022

Chirag Mahesh Loke ..Applicant
vs.
The State of Maharashtra ..Respondent

Mr. Prashant M. Patil for applicant.
Mr. R. M. Pethe, APP for State.
Mr. Gajanan Rathod, ACP, Turbhe Division Navi Mumbai
present.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 8, 2022.

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State. The Investigating Officer is present.
2. This is a second application for bail filed by the applicant in this Court. On 01.10.2021 while disposing of the first bail application No.62 of 2020, the following order was passed :-

“Heard learned Counsel for the applicant. After arguing the matter for some time, learned Counsel for the applicant, on instructions, seeks leave to withdraw the application as considering the fact that the offence

in respect of which he sought bail is registered in the year 2013, this Court expressed that trial could be expedited. Accordingly, the trial is expedited. In the event, the trial does not commence within a period of 6 months from today, liberty to file a fresh bail application is kept open.

2. Bail Application is allowed to be withdrawn with the aforesaid liberty.”

3. In the submission of learned counsel for the applicant, as the trial is not progressing, the second application for bail is filed. It is the submission on behalf of the applicant that the applicant was arrested on 29.10.2013 and he is under incarceration almost for a period of 8 years and 9 months. In his submission the period of incarceration is too long and therefore, the applicant deserve to be released on bail. The offence with which the applicant is charged which is in respect of C.R. No.368 of 2013 registered with the Nerul Police Station, District Thane, punishable under Section 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (hereafter “MCOC”, for short) and under Section 307, 392, 353, 333 read with 34 of the Indian Penal Code (hereafter “IPC” for short) and under Section 37(1), 135 of the Arms Act. At the relevant time

when the offence was committed, the applicant was 28 years of age.

4. The case of the prosecution in the FIR is in respect of the incident which took place on 29.12.2013. It is alleged that the applicant who is a co-accused No.2 is a part of a gang involved in chain snatching of which the accused No.1- Stefen Das Swami is the gang leader. It is alleged that after the chain snatching incident, the accused tried to escape. The accused were chased by the policemen. The accused No.1 thereupon assaulted a policeman with a knife as a result of which the policeman suffered injuries on his chin. The applicant (accused No.2) is alleged to have instigated the accused No.1 to assault the policeman.

5. Learned counsel for the applicant invited my attention to the judgment of the Supreme Court in the case of **Satendar Kumar Antil Vs. Central Bureau of Investigation and another** in Miscellaneous Application No.1849 of 2020 in Special Leave Petition (Crl.) No.5191 of 2021 to support his submission that the applicant be released on bail.

6. Affidavit-in-reply has been filed on behalf of the prosecution indicating the commonality so as to attract the stringent provisions of MCOC Act. Learned APP vehemently submitted that the present application should be dismissed. According to him, it is only on 01.10.2021 that this Court had allowed the applicant to withdraw the first bail application. According to him, the trial has commenced. Learned APP relied upon the Roznama to indicate the default on the part of the applicant's advocate in proceeding ahead with the trial. It is his submission that delay is attributable only to the applicant. He therefore submits that having regard to the object of enacting stringent provisions under MCOC Act, this is not a case for grant of bail.

7. There is definitely some substance in the contention of learned APP that the applicant has on some occasions been responsible for delaying the trial. It is material to note that there are as many as 37 witnesses to be examined. In the affidavit-in-reply filed, it is stated that the prosecution will not examine all witnesses and try to finish the trial as early as possible. However, considering the number of witnesses

to be examined and stage at which the trial presently is, the trial is not expected to conclude soon.

8. So far as the incident in question is concerned, the role attributed to the applicant is that after the chain snatching incident, the applicant instigated the accused No.1 to assault the policeman with the knife when the policeman tried to apprehend the accused. The commonality of the offences alleged against the present applicant qua the accused No.1 is in respect of as many as 5 C.R's. In respect of C.R. No.160 of 2011 under Section 379 read with 34 of IPC; C.R. No.165 of 2011 under Section 392, 297, 506(2) read with 34 of IPC and Section 37 (1), 135 of Bombay Police Act, 1951; C.R. No.420 of 2011 under Section 379 read with 34 of IPC are concerned, the applicant has been convicted. It is the submission of learned counsel for the applicant that he has already undergone the sentence the applicant is in custody since 29.12.2013. The other two offences are C.R. No.424 of 2013 under Section 379 read with 34 of IPC and C.R. No.236 of 2013 under Section 392 read with 34 of IPC of

the Vashi Police Station and Nerul Police Station, respectively, which are pending trial. Even in respect of the present offence there is commonality.

9. No doubt the provisions of MCOC Act are very stringent. However, taking an over all view of the matter, the role of the applicant in the present incident and mainly the fact that the applicant is under long incarceration for more than 8 years and 9 months compels me to take a view in favour of the applicant. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of the Supreme Court.

10. Taking an over all view of the matter, the bail application is allowed on the following terms :-

ORDER

(i) The applicant be released on bail in connection with C.R. No.368 of 2013 registered with the Nerul Police Station for offences punishable under Section 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 and under Section 307, 392, 353, 333 read with 34 of the IPC and under Section 37(1), 135 of the Arms Act on executing PR

Bond in the sum of Rs.50,000/- with one or more solvent sureties in the like amount.

(ii) The applicant is permitted to furnish cash bail in the sum of Rs.50,000/- for a temporary period of 6 weeks.

(iii) The applicant to report to the Police Sub Inspector of the Nerul Police Station once in a week between 11.00 a.m. to 1.00 p.m. on the first Saturday of the month till the conclusion of the trial.

(iv) The applicant shall regularly attend the trial on the date of hearing unless exempted by the Court.

(v) The applicant shall not tamper with the evidence or threaten the witnesses.

(vi) The bail application stands disposed of.

(M. S. KARNIK, J.)