

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

BAIL APPLICATION NO. 1237 OF 2022

Nitin Shivaji Wadekar .. Applicant

Versus

The State of Maharashtra .. Respondent

**WITH
INTERIM APPLICATION NO. 1357 OF 2022
IN
BAIL APPLICATION NO. 1237 OF 2022**

Sandeep Balasaheb Shelke .. Applicant
Intervenor

In the matter between:

Nitin Shivaji Wadekar .. Applicant

Versus

The State of Maharashtra .. Respondent

Mr. Shailesh Kharat a/w Mr. Bhomesh Bellam and Mr. Ashish Raghuvanshi,
Advocate for the Applicant.

Mr. R. M. Pethe, APP for the Respondent-State.

Mr. Aniket U. Nikam i/b Mr. Vivek N. Arote, Advocate for the Intervenor.

CORAM : VINAY JOSHI, J.

DATE : 27th APRIL, 2022.

P.C. :

. This is an application for temporary bail in connection with Crime No.

332 of 2016, registered with Talegaon Dabhade Police Station, District Pune, for the offence punishable under Sections 302, 395, 120-B, 201, 143, 147, 148, 149 of the Indian Penal Code, Section 4(25)(27) of Arms Act and Section 37(1) r/w 135 of Bombay Police Act and Sections 3(1)(ii), 3(4) of MCOC Act.

2. Since temporary bail is claimed on the medical ground, it is necessary to consider the application from that perspective. It is the applicant's contention that his brother namely Shankar Wadekar met with an accident and still hospitalized. His brother sustained severe bodily injuries and is under treatment. It is canvassed that there is nobody to look after the applicant's brother Shankar, therefore, temporary bail is claimed for a period of three months.

3. The State resisted bail firstly by contending that though it is the case of temporary bail, still the rigor of Section 21(4) of MCOC Act would attract. In support of said contention, reliance is placed on the decision of this Court in the case of ***Shri. Anil Umrao Gote V/s State of Maharashtra***¹. Moreover, it is submitted that there are other family members to look after the applicant's ailing brother. Besides that, certificate of concerned hospital has been tendered to show that the applicant's brother is conscious and there is no case of extreme emergency.

4. The applicant's learned Counsel would submit that rigorous conditions of Section 21(4) of the MCOC Act would not apply while considering the case of temporary bail. He would submit that this Court in

¹ 2005 ALL MR (Cri) 350.

the case of ***Surendra Pundalik Gadling V/s. Senior Inspector of Police***² while dealing with the application under Unlawful Activities (Prevention) Act (UAPA) has observed that the considerations for temporary bail are quite distinct. Likewise on the same point, reliance is placed on the decision of this Court in the case of ***Ms. Purnima Upadhyay V/s. State of Maharashtra & others***³, which also pertains to UAPA Act, 1967. Though the twin conditions are similar under UAPA Act akin to MCOC Act, however those are to be read in context with the aim and object of the particular statute. This Court in above referred case of ***Shri. Anil Umrao Gote V/s State of Maharashtra*** has specifically dealt with the issue regarding the applicability of rigor of Section 21(4) of the MCOC Act and ultimately ruled that the rigor would apply even in a case of temporary bail. Having regard to said fact, it is necessary to go through the applicant's entitlement for temporary bail on the above touch stone.

5. The applicant's learned Counsel has argued that in existing crime, three other co-accused have been released on temporary bail by the trial Court. On perusal of bail orders passed by the trial Court dated 04th July, 2020 and 15th September, 2020, it reveals that considering the facts and situation, the prosecutor has offered no objection to grant temporary bail. Likewise from another order dated 20th May, 2020, it reveals that temporary bail was claimed by the applicant for his own medical condition, therefore, it lies on distinct footing. Besides that, medical ground has to be considered independently on case to case basis.

² 2021 SCC OnLine Bom 3679.

³ 2015 SCC OnLine Bom 5989.

6. Coming to the facts of the case, the applicant is involved in serious crime. After obtaining statutory sanction, stringent provisions of MCOC Act have been invoked. Keeping in mind said fact, I have gone through the medical certificates submitted by both the sides. The applicant's learned Counsel took me through medical certificate (Page No. 26) to point out that it was opined that the patient's condition was critical. However, the said certificate does not bear any date. On the other hand, the prosecution has collected recent certificate dated 18th April, 2022 specifying the existing condition of the patient. Precisely it is opined that "The patient is conscious but is completely dependent for his daily routine. The patient is unable to talk or stand yet. He may need two months more for complete recovery." It appears that now the patient is out of danger and two months period for recovery is required. Besides that, admittedly there are so many other family members to look after the patient. The Applicant's father, sister, brother-in-law, mother and wife of injured are available for nursing the ailing patient. Having regard to above facts, a case for grant of temporary bail is not made out. In view of that, the application stands rejected.

7. Intervention application also stands disposed of.

(VINAY JOSHI, J.)