

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1600 OF 2022

SHRADDHA
KAMLESH
TALEKAR

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1. Bapu @ Kumar Prabhakar Nayar
Age : 41 years, Occ. : Business,
Residing at B-35/13, Uppar India Nagar,
Bibvewadi, Pune -411 037.
At present Yerwada Central Prison,
Pune

...Applicant

Vs.

The State of Maharashtra
[Through Faraskhana Police Station,
Pune Vide C.R.No. 1094/2020]

... Respondent

Mr.Priyal G. Sarda for the applicant.

Mr. Ajay Patil, APP for the State.

CORAM : N. J. JAMADAR, J.
Reserved for order on : 11th MAY, 2022
Pronounced on : 13th May 2022.

ORDER :

1. The applicant, who is arraigned in Special Case (MCOCA) No.120 of 2021, arising out of C.R.No. 1094 of 2020, registered with Faraskhana Police Station, Pune for the offences punishable under sections 302, 143, 144, 147, 148 and 149 read with 34 of the Indian Penal Code, 1860 ('the Penal Code'), section 37(1) of the Arms Act, 1959, section 135 of the Maharashtra Police Act, 1951 and sections 3(1)(ii), 3(2), 3(4), 3(5) and 4 of the Maharashtra Control of Organised Crime Act, 1999 ('the MCOC Act, 1999), has

preferred this application for grant of temporary bail for a period of 15 days to facilitate him to perform the rites and rituals of the deceased mother of the applicant.

2. The applicant is implicated as accused No.12 in above-numbered C.R. No.1094 of 2020 lodged by Rahul Bhagwan Alamkhane, the son-in-law of Deepak Maratkar (the deceased). The deceased was a Social Worker. Since 15 years, there was a feud between Deepak Maratkar, on the one side, and Mahendra Saraf, Ashwini Kamble and Sunny Kolte, on the other side. Complaints and cross-complaints were lodged. On 2nd October 2022, at about 12:15 a.m., on account of the previous enmity, Sunny Kolte, Sandeep Kolte, Rohit Kamble, Rahul Ragir and two others allegedly assaulted the deceased by means of deadly weapons and committed his murder, at the instance of Ashwini Kamble and Mahendra Saraf. Crime was registered at C.R. No. 1094 of 2020 with Faraskhana Police Station, Pune.

3. The applicant, who had been in custody in C.R. No.477 of 2015, registered with Kondhwa Police Station, Pune for the offences punishable under sections 307, 387, 447, 504, and 506(2) read with 34 of the Penal Code, section 4(25) of the Arms Act, 1959, section 37 (1) of the Bombay Police Act, 1951 and sections

3(1)(ii), 3(2), 3(4), 3(5) and 4 of the MCOC Act, 1999 since 8th May 2016, came to be also implicated as accused in C.R. No.1094 of 2020. Post completion of investigation, charge-sheet has been lodged leading to Special (MCOCA) Case No. 120 of 2021, which is pending on the file of the learned Special Judge (MCOC), Pune.

4. The mother of the applicant Rani Prabhakar Nayar passed away on 1st June 2021. The applicant preferred applications for releasing him on temporary bail to perform the last rites. The application was rejected by the Special Court. The applicant preferred an application in this Court, being Bail Application Nos. 2091 of 2021 and 2092 of 2021.

5. By an order, dated 11th June 2021, this Court disposed of the applications with a direction to the Superintendent, Prison, to make arrangements to allow the interaction of the applicant with his family members, through video conferencing on 13th June 2021 and 16th June 2021, for a period of three hours. The Court was of the view that in the backdrop of the then prevalent Covid-19 Pandemic situation, permission to visit the family, under police escort, was also fraught with risk to the persons accompanying the applicant and the inmates of the prison, where the applicant would be re-lodged.

6. The applicant preferred an application before the learned Special Judge (MCOCA) with a prayer to release him on temporary bail for a period of 15 days to perform the last rituals proposed to be held on the death anniversary of the mother of the applicant. The learned Special Judge (MCOCA) was persuaded to reject the application opining, *inter-alia*, that the release of the applicant even on temporary bail did not merit consideration in view of the imminent possibility of threat to law and order. The learned Special Judge, thus, partly allowed the application with direction to the Superintendent, Central Jail, Yerwada, Pune to allow the applicant to attend rituals in the wake of the first death anniversary of the mother of the applicant on 19th and 20th May 2022 in between 11:00 a.m. to 2:00 p.m. through video conference. The prayer to permit the applicant to participate in those rituals, under police escort, came to be rejected.

7. The applicant has, thus, approached this Court.

8. I have heard Mr. Priyal Sarda, the learned counsel for the applicant and Mr. Ajay Patil, the learned APP for the State.

9. Mr. Sarda, the learned counsel for the applicant submitted that the applicant now restricts the prayer to release him on temporary bail for a period of five days commencing from 19th May

2022. It was submitted that the fact that the applicant could not participate in the funeral as well as last rites of the mother of the applicant, who passed away on 1st June 2021 is not contested. In the then prevailing situation, according to Mr. Sarda, it was considered appropriate not to permit the applicant to participate in the funeral and last rites of his deceased mother. Now there is no impediment to release the applicant on temporary bail, as the situation has considerably eased off. It was further submitted that the applicant had been in custody since the year 2016, and, thus, the apprehension on the part of the prosecution of commission of the offences and threat to law and order is wholly unfounded.

10. Mr.Sarda further submitted that the applicant is now seeking temporary bail completely on humanitarian ground and this Court in the cases of ***Surendra Pundalik Gadling Vs. Senior Inspector of Police, National Investigation Agency***¹ and ***Mangesh Sham Satpute Vs. State of Maharashtra***² has ordered the release of the applicants therein, who were arraigned for the offences punishable under the Unlawful Activities (Prevention) Act, 2008 ('UAPA') and MCOC Act, 1999, respectively.

11. Per contra, Mr.Ajay Patil, the learned APP questioned the

1 Criminal Appeal No.220 of 2021 dt. 30th July 2021

2 Criminal Bail Application No. 470 of 2020 dt. 4th September 2021

very tenability of the application for temporary bail. Mr. Patil strenuously submitted that a person accused of the offences punishable under the MCOC Act, 1999 cannot be released even on interim or temporary bail in the face of the interdict contained in section 21 of the MCOC Act, 1999 unless the conditions stipulated therein are fulfilled. In other words, according to Mr. Patil, the Court will have to record a finding that there are reasonable grounds for believing that the accused is not guilty of the offences punishable under MCOC Act, 1999 and he is not likely to commit any offence, when on bail. Interim or temporary bail on humanitarian ground also, according to Mr. Patil, cannot be granted without complying with the aforesaid requirement in law.

12. To bolster up this submission, Mr. Patil placed reliance on a judgment of this Court in the case of *Anil Umrao Gote Vs. State of Maharashtra* ³ and another judgment of this Court in the case of *Sambhaji Haribhau Kudale Vs. State of Maharashtra* ⁴, wherein the judgment in the *Anil Umrao Gote* (Supra) was followed.

13. Mr. Sarda, the learned counsel for the applicant joined the issue by canvassing a submission that a bail on humanitarian ground stands on a different footing. It is not the requirement of

³ 2005 All MR (Cri.) 350

⁴ 2006 All MR. (Cri.) 3193

law, when bail is sought on humanitarian ground, that the applicant should make out the entitlement for release on bail as if the application is preferred on merits. Such a construction, according to Mr.Sarda, would be plainly unjust.

14. I have carefully considered the aforesaid submissions. First and foremost, it is necessary to note the restrictions which section 21 of the MCOC Act, 1999 imposes in the matter of release of an accused arraigned for the offences punishable under MCOC Act, 1999. The relevant part of section 21 of the MCOC Act, 1999 reads as under :

21. Modified application of certain provisions of the Code. -

.....

(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless—

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release ; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(5) Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the Court that he was on bail in an offence under this Act, or under any other Act, on the date of the offence in question.

(6) The limitations on granting of bail specified in sub-section (4) are in addition to the limitations under the Code or any other law for the time being in force on the granting of bail. Modified application of certain provisions of the Code. 19 Maharashtra Control of Organised [1999 : Mah. XXX Crime Act, 1999;

15. In the context of the controversy at hand, it would be suffice to note that in addition to an opportunity to the Public Prosecutor to oppose the prayer for release of a person who is accused of the offences punishable under MCOC Act, 1999, there are two further requirements to be satisfied, in case the Public Prosecutor opposes the prayer for bail. First, the Court ought to be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence. Second, the Court must be further satisfied that such person, while on bail, is not likely to commit any offence.

16. It would be advantageous to immediately notice a three Judge Bench judgment of the Supreme Court in the case of ***Ranjitsing Brahmajeetsingh Sharma Vs. State of Maharashtra & Anr.***⁵, wherein the scope of the aforesaid restrictions was illuminatingly elucidated. The relevant part of paragraph No.43 reads under :

49 We are furthermore of the opinion that the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the Court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or

5 2005 ALL MR (Cri.) 1538 (S.C.)

major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the Court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity.....

17. The question that wrenches to the fore is whether the Court is enjoined to record the aforesaid satisfaction, on the touchstone indicated in the case of *Ranjitsing Brahmajeetsingh Sharma* (Supra), even where the prayer is to release a person accused of the offences punishable under MCOC Act, 1999, on a temporary or interim bail to address the exigency of the situation.

18. Mr.Patil, the learned APP would submit that the question is required to be answered in the affirmative in view of the pronouncements of this Court in the cases of *Anil Umrao Gote* (Supra), and *Sambhaji Haribhau Kudale* (Supra). In the case of *Anil Umrao Gote* (Supra), the applicant therein who was accused of the offences under the MCOC Act, 1999 had sought release on temporary bail to facilitate him to submit nomination form in connection with Legislative Assembly Elections 2004. The learned Single Judge of this Court, after adverting to the provisions of the MCOC Act, 1999 and the pronouncement of the Supreme Court in the case of *Usmanbhai Dawoodbhai Menon & Ors. Vs. State of*

Gujarat ⁶ held that the proposition that power of the Court to enlarge an accused on bail includes the power to release the accused on 'interim bail' or 'temporary bail', does not necessarily mean that the Court can release the accused on interim bail or temporary bail, even if the requirements of sub-section (4) of section 21 of the MCOC Act, 1999 are not fulfilled. For, it is only on fulfilment of conditions in section 21(4) of the MCOC Act, 1999 that the Court would assume jurisdiction to release the accused on bail, or for that matter, "interim" or "temporary" bail, as the bar is lifted only on that condition. Thus, neither the Special Judge nor the High Court can release the accused involved in commission of offence under the MCOC Act, 1999 on "interim bail" or "temporary bail" unless the two conditions specified in sub-section (4) of section 21 of the MCOC Act, 1999 are fulfilled.

19. The correctness of the aforesaid judgment was sought to be questioned in **Sambhaji Haribhau Kudale** (Supra), especially in the light of the pronouncement of the Supreme Court in the case of **Ranjitsing Brahmajeetsingh Sharma** (Supra). Another learned Single Judge of this Court negated the challenge and held that

⁶ 1988(2) S.C.C. 271

the decision in the case of **Anil Umrao Gote** (Supra) did not require reconsideration. The observations in paragraph 12 reads as under:-

“12. Thus, the power of the Special Court or the High Court to grant bail is circumscribed by Sub Section 4 of Section 21 of the said Act of 1999. It follows that once a statute mandates that unless stringent conditions incorporated in the statute are complied with accused cannot be enlarged on bail, requirement of statute will apply even to the application for temporary bail. In the light of law laid down by the Apex Court, the Applicant cannot rely upon the Universal Declaration of Human Rights, 1948. In my view, the decision in case of Anil Gote [2005 ALL MR (Cri.) 350] does not require any reconsideration and the said decision is the settled position of law.”

20. The aforesaid judgments, thus, enunciate in clear and explicit terms that the rigour of section 21 of the MCOC Act, 1999 would apply even to an application for temporary or interim bail.

21. In contrast, in the case of **Mangesh Sham Satpute** (Supra), another learned Single Judge of this Court, wherein the applicant had sought temporary bail on the ground of illness of his mother, ordered the release of the applicant, who was also accused of the offences punishable under sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act, 1999, and observed, *inter-alia*, as under :

4 Looking to the aforesaid facts, it would be just and proper, in the interest of justice and on humanatarian ground, to grant bail to the applicant, to enable him to meet his ailing mother who is said to be on a death bed. It is made clear that this is a temporary bail for a limited period and that, the applicant shall not, in any way,

misuse the liberty granted to him, in a sense, he shall not in any manner, try to influence any of the persons connected with this crime, nor shall make an attempt to flee from the jurisdiction of the concerned Special Court.

22. In the case of ***Nusrat @ Nasrat Ali Mohammad Idris Khan Vs. The State of Maharashtra***⁷, this Court had granted temporary bail on the ground of the death of the father of the applicant therein. The applicant in the said case, was also arraigned for the offences punishable under the MCOC Act, 1999.

23. In the latter two decisions, it seems, the attention of the Court was not invited to the judgments in the cases of this Court in the cases of ***Anil Umrao Gote*** (Supra), and ***Sambhaji Haribhau Kudale*** (Supra). Nor, the Courts had adverted to the interdict contained in section 21 of the MCOC Act, 1999, while ordering the release of the applicants therein on temporary bail. Thus, the orders in the cases of ***Mangesh Sham Satpute*** (Supra) and ***Nusrat @ Nasrat Ali Mohammad Idris Khan*** (Supra), in my considered view, lack the precedential value as they were rendered without noticing the earlier two judgments of this Court wherein the issue was considered threadbare. I, therefore, find substance in the submissions of Mr.Patil, the learned APP that in view of the binding decisions of this Court in the cases of ***Anil Umrao Gote***

⁷ 2015 SCC OnLine Bom. 2758

(Supra), and ***Sambhaji Haribhau Kudale*** (Supra), an application for temporary bail, where the applicant is accused of the offences punishable under the MCOC Act, 1999 cannot be entertained in disregard to the interdict contained in section 21 of the MCOC Act, 1999.

24. It is true that in the case of ***Surendra Pundalik Gadling*** (Supra), a Division Bench of this Court (to which I was a party), directed the release of the applicant therein on temporary bail on humanitarian ground to facilitate the applicant to participate in the last rites and rituals and family condolence gathering of the deceased mother of the applicant therein. That was an appeal under section 21(4) of the National Investigation Agency Act, 2008, against an order passed by the learned Special Judge, NIA rejecting an application for temporary bail. In the said judgment, this Court, *inter-alia*, observed that,”.....from the perusal of the impugned order, it does not appear that the NIA Court approached the issue from the perspective of humanitarian consideration. In our view, the NIA Court misdirected itself in importing the considerations which bear upon grant of regular bail to a prayer for release on humanitarian ground”. Reliance placed on behalf of the respondent-NIA on the judgment in the

case of *National Investigation Agency Vs. Zahoor Ahmad Shah Watali*⁸, which governs the grant of a regular bail, therefore, does not seem well founded in the context of the consideration of the prayer for temporary bail to participate in the last rites/rituals of the deceased mother of the appellant”.

25. In the aforesaid judgment, we have referred to the pronouncement of the Supreme Court in the case of *Zahoor Ahmad Shah Watali* (Supra) which deals with the restrictions imposed by the provisions contained in section 43-D of the UAPA in the matter of grant of bail. The said restrictions, by and large, proceed on the line of section 21 of the MCOC Act, 1999.

26. In my considered view, the issue of restriction on the power of the Court to grant interim or temporary bail, even for short duration of a couple of days, where there are statutory provisions which restrict the power of the Court to grant bail like section 21 of the MCOC Act, 1999, section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and section 43-D of the UAPA, especially where the temporary bail is sought on the ground of the death of an immediate family member and/or terminal illness of the immediate family member, requires consideration from a

8 (2019) 5 SCC 1

humanitarian perspective.

27. In an appropriate case, the issue as to whether the restrictions on the power of the Court to grant bail under sections section 21 of the MCOC Act, 1999, section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and section 43-D of the UAPA apply with equal force where the prayer is to release the accused on an interim or temporary bail for a short duration to facilitate the accused to attend to an extremely emergent situation, like the funeral and/or last rites of an immediate family member, is required to be considered.

28. Nonetheless, in the instant case, having regard to the exigency of the situation where the rites/rituals in the wake of the first death anniversary of the mother of the applicant, are scheduled to be performed from 19th May 2022, without delving into the aforesaid issue, I deem it in the fitness of things, to direct that the applicant be permitted to attend the last rites/rituals for a couple of days, under police escort.

29. Hence, the following order :

ORDER

- (i) The application stands partly allowed.
- (ii) The applicant-Bapu @ Kumar Prabhakar Nayar is

granted permission to attend the last rites/rituals in connection with the first death anniversary of his mother under police escort, on 19th May 2022 and 20th May 2022.

(iii) The respondent-State shall provide the necessary police escort.

(iv) The Superintendent, Central Prison, Yerwada Central Prison, Pune shall release the applicant under Police escort on 19th May 2022 at 8:00 a.m. and the applicant be re-lodged in the Central Prison by 8:00 a.m. on 21st May 2022.

(v) The expenses of police escort shall be borne by the State.

(N.J. JAMADAR, J.)