

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL BAIL APPLICATION NO. 1881 OF 2022**

Navin Satyawar Malik	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Diwakar Singh a/w. Mr. Rahul Mishra i/b. Ms. Kajal Singh for Applicant.
Mr. S.S. Hulke, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.
DATE : 29th July 2022.

PC. :

1. Applicant is seeking bail under Section 439 of Criminal Procedure Code in C.R.No. 55 of 2015, dated 4th August 2015, registered with Panvel Railway Police Station, under Sections 395, 397 and 120-B of Indian Penal Code and under Sections 3 & 25(c) of The Arms Act and under Sections 3(1) (II), 3(2), 3(4) of The Maharashtra Control of Organized Crime Act, 1999 (for short, 'M.C.O.C. Act'). The investigation of the said crime has now culminated into M.C.O.C. Case No. 04 of 2016 and is pending on the file of learned Additional Sessions Judge, MCOC Special Court, Thane.

2. This is a third successive application for bail. The first application for bail (Bail Application No. 2943 of 2017) preferred by Applicant was rejected by this Court by Order dated 4th July 2018. The second application for

bail (Bail Application No.520 of 2019) was also rejected by a speaking Order dated 3rd March 2020. By the said Order dated 3rd March 2020, this Court had directed the learned Judge of Special Court seized of M.C.O.C. Case No. 04 of 2016 to expedite the hearing of the said case and as far as possible to conduct it on day to day basis.

3. Mr.Singh, learned counsel for Applicant submitted that, earlier two applications of Applicant were rejected by this Court, apart from the merits involved in the present case, on the predominant ground that, the Applicant is a member of an Organized Crime Syndicate headed by James Almeda @ Sam, who is indulging into committing robberies in running trains and it is their specialization in the field of crime. He submitted that, the said principal accused, namely, James J. Almeda @ Sam has been granted bail by the co-ordinate Bench (Coram : Shri. Prakash D. Naik, J.) by its Order dated 15th March 2022. He submitted that, James Almeda @ Sam has been released on bail mainly on the ground of prolonged incarceration and delay in conducting trial, despite direction of this Court to expedite it. He therefore submitted that, the present Applicant being alleged member of the syndicate headed by James Almeda @ Sam, be released on bail on the ground of parity.

4. Mr.Hulke, learned A.P.P. opposed the application and submitted that, delay in conducting trial solely cannot be attributed to the prosecution, as there are various other circumstances which affect the speedy conduction

of trial. He submitted that, the present application therefore may not be entertained and be dismissed.

5. It is a fact on record that, accused James Almeda @ Sam, i.e. the head of Crime Syndicate of which Applicant is alleged to have been a member, has been released on bail by the co-ordinate Bench by its Order dated 15th March 2022. It is also a fact on record that, by Order dated 3rd March 2020, this Court had directed that, the trial of the said MCOC Special Case No.04 of 2016 be expedited and conducted as far as possible on day to day basis. While releasing James Almeda @ Sam, the co-ordinate Bench in para No.9 has observed as under :-

“9. It is pertinent to note that about 2 years ago the evidence of first witness is being recorded. His cross-examination is yet to be completed. The report submitted by the learned APP appearing before the trial Court indicates that the prosecution proposes to examine 20 other witnesses and it would take another year to complete the recording of evidence. The applicant is in custody for about 6 and ½ years. The restrictions under section 21(4) of MCOC Act would not be impediment in granting bail due to prolonged incarceration of accused without trial in the present case.”

6. The observations made by the Co-ordinate Bench in para No.9 noted above are *mutatis mutandis* applicable to the present Applicant. The role attributed to the Applicant is same and/or similar to that as has been

attributed to James Almeda @ Sam in the present case. As James Almeda @ Sam has been directed to be released on bail, the Applicant is entitled to be released on bail on the ground of parity.

7. Hence, the following Order :-

- (i) Applicant is directed to be released on bail in connection with C.R. No. 55 of 2015 registered with Panvel Railway Police Station, on executing P.R. bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (ii) Applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of ten weeks in lieu of sureties;
- (iii) Applicant shall report Panvel Railway Police Station once in three months on First Saturday of the month between 11.00 a.m. to 1.00 p.m. till further Orders.
- (iv) Applicant shall not approach witnesses. He shall not tamper with evidence.
- (v) Bail Application is allowed in the aforesaid terms.

[A.S. GADKARI, J.]