

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

**CRIMINAL BAIL APPLICATION NO. 2151 OF 2022**

|                                 |               |
|---------------------------------|---------------|
| Rahul Machindra Shinde @ Barkul | ...Applicant  |
| Versus                          |               |
| State Of Maharashtra            | ...Respondent |

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Mr. Balwant V. Salunkhe a/w Mr. Hamid D. Mulla, Advocate for the Applicant.

Ms. P. N. Dabholkar, APP for the Respondent – State.

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| <b>CORAM</b> | <b>:</b> | <b>PRAKASH D. NAIK, J.</b>            |
| <b>DATE</b>  | <b>:</b> | <b>14<sup>th</sup> OCTOBER, 2022.</b> |

**PER COURT:**

1. The applicant is arrested on 10<sup>th</sup> March, 2017 in connection with C.R. No.I-122 of 2017, registered with Manpada Police Station for the offences under Sections 395, 397 and 412 of Indian Penal Code and Sections 3(1)(ii), 3(2), 3(4) Maharashtra Control of Organized Crime Act (for short 'MCOC Act').
2. Vide order dated 5<sup>th</sup> September, 2022 report was called from the trial Court about the status of the trial. The report mentions that the case is pending for framing of charge.
3. The prosecution case is that, the police received information that, some thieves had entered in premises of Chandresh Park building. They were carrying weapon and other articles. Police tried to apprehend them. One of them was caught. Four others

managed to flee. The arrested person showed three places. At two places they committed robbery in house and at third place watchman was threatened and forcefully took his mobile phone.

4. Learned counsel for the applicant submitted that the provisions of MCOC Act are not applicable to applicants. There is no evidence to show that applicant is the member of organised crime syndicate. The prosecution is relying on statement of co-accused. Identification parade was held belatedly. The applicant is in custody since last 5 years and 8 months. There is no progress in the trial. Bail can be granted on the ground that, he is in prolonged custody. Reliance is placed on the order passed by this Court in the case of Sachin Atmaram Vartak V/s State of Maharashtra 2022 DGLS(Bom.) 11 and Puru @ Bhuta P. Rathod V/s Sr. Inspector of Police, Kongaon Police Station, Bhiwandi & Another delivered in Criminal Bail Application No. 3707 of 2021.

5. Learned APP submitted that provisions of MCOC Act are invoked against the applicant. The offence is of serious nature. Role has been attributed to the applicant. There are criminal antecedents against the applicant. He is involved in seven cases. The previous application for bail was rejected on merits.

6. In the case of Sanjay Chandra Vs. CBI (supra), it was

observed that object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson. The grant or denial is regulated to a large extent by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the

burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.

7. In Vivek Kumar Vs. State of U.P. (2000)9-SCC-443, bail was granted to accused by Supreme Court on the ground that it is quite a long period that he is in custody. In Babba Vs. State of Maharashtra (2005)11-SCC-569, the accused was in custody for a long period for offence under TADA Act. In Paramjit Singh Vs. State (NCT of Delhi), the Supreme Court granted bail. The accused was prosecuted under TADA Act. Earlier the application was rejected and trial was expedited. There was no progress in trial. In the case of Angela Sontakke Vs. State of Maharashtra (2021)3-SCC-723, the Supreme Court granted bail to the accused facing prosecution under UAPA Act on the ground that accused is in custody for five years.

8. The settled principle of law is that prolonged custody affects fundamental rights under Article 21 of Constitution of India. The conflict at the most could be in the directions issued in the case of Supreme Court Legal Aid Committee (supra) and Section 436-A of

Cr.PC; since the criteria for releasing the accused is based on sentence and mathematical calculation of period of custody. However, there is no debate that incarceration in custody for long period without trial or completion of trial affects personal liberty guaranteed under Article 21 of Constitution of India.

9. In the case of Union of India Vs. K.A.Najeeb (supra), the Supreme Court has considered the stringent conditions for grant of bail under Section 43-D(5) of UAPA Act. In the said case the accused was in custody for the offences under UAPA Act. In the case of The NIA Vs. Areeb Ejaz Majeed (supra), the accused was tried for the offences under UAPA Act. In both the cases, the accused was granted bail by High Court and NIA Court on the ground that accused was in custody without trial for long period of time, which affected his right under Article 21 of Constitution of India. Both the orders were confirmed by the Appellate Courts.

10. In the light of observations of Supreme Court and this Court as stated above, the Court has to perform balancing act. The sympathy for under trials who are in custody has to be balanced with gravity/magnitude of crime, likelihood of threat to witnesses. The analysis may be based on facts of each case.

11. I have analyzed the factual aspects of the matter as stated

above and noted that in spite of expediting the trial vide order dated 14<sup>th</sup> October 2019 and directing the Trial Court to conclude the trial within a period of nine months, there is no progress in the trial. The applicant has remained in custody without charge being framed against him. This clearly violates the right of applicant under Article 21 of Constitution of India. The applicant has been seeking bail on the ground of prolonged custody. In the previous application for bail it was contended that applicant is in custody for three years. This Court had expedited trial, instead of granting bail. However, even after two and half years thereafter, there is no progress in trial. Prolonged custody infringes Article 21 of Constitution of India. The Trial Court had stated that there were difficulties on account of lock down due to pandemic of Covid-19. The situation has not improved. It is not clear as to when the trial would commence and conclude. There is no evidence that applicant has tried to tamper with evidence.

### **ORDER**

- i. The Criminal Bail Application No.2151 of 2022 is allowed;
- ii. The applicant is directed to be released on bail in connection with C.R. No.I-122 of 2017, registered with

Manpada Police Station on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

**iii.** The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of surety.

**iv.** The applicant shall report concerned Police Station on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;

**v.** Application stands disposed off.

**(PRAKASH D. NAIK, J.)**