

rkmore

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

BAIL APPLICATION NO.2388 OF 2022

Mrugank Kalwallkar @ Mickky] .. Applicant.

vs.

State of Maharashtra] .. Respondent

ALONGWITH

BAIL APPLICATION NO.2080 OF 2022

Ravi Mallesh Borra @ D.K.Rao] .. Applicant.

vs.

State of Maharashtra] .. Respondent

ALONGWITH

BAIL APPLICATION NO.2670 OF 2022

Annadurai Balu Devenra] .. Applicant.

vs.

State of Maharashtra] .. Respondent

Mr.Prashant Pandey a/w Harshita Shroff, Darshit Jain, i/b W3Legal LLP,
for the Applicant in BA No.2388/2022.

Mr.Niranjan Mundargi a/w Kiran Jadhav, Sunetra Bhosale, Vishal
Kolekar, Shubham Kadam i/b Randhir Kale for Applicant in BA
No.2080/2022.

Dr.Yug Mohit Chaudhary a/w Gaurav Bhawnani i/b Khan Abdul Wahab
for the Applicant in BA No.2670/2022.

Mr. Pradip Gharat, SPP for the State.

CORAM : BHARATI DANGRE, J

DATE : 13th OCTOBER, 2022.

P.C.

1] Three Applicants who are charged for the offence under Section 387, 504, 506(2) read with 34 of the Indian Penal Code, Section 7 of the Criminal Law Amendment Act and Section 3(1)(ii), 3(2), 3(4) of the MCOC Act, seeks their release on bail, by trying to derive benefit of order passed by this Court on 29.07.2022 in the case of co-accused Anil Shankar Patil in Bail Application No.33/2022.

2] Heard the learned counsel for the Applicants and the learned SPP for the State.

The learned counsel Mr.Yug Chaudhary submits that the co-accused Anil Patil had approached this Court by filing an application under Section 439 of the Cr.P.C. read with Section 21(4) of the MCOC Act, seeking his release on bail. The Application was heard on merits and this Court on perusal of the material compiled in the charge-sheet which include statements of witnesses, arrived at a conclusion that his role as a member of the organized crime syndicate headed by the gang leader D.K. Rao (accused No.1) has clearly surfaced on record.

Considering the material in the charge-sheet a finding was recorded that it cannot be said that the Applicant is not guilty of the offence as contemplated under Section 21(4) of the MCOC Act.

3] The said Applicant approached the Hon'ble Apex Court by Special Leave to Appeal (Cri.) No.3632/2021d and by order dated 28.05.2021 though the Special Leave to Appeal was dismissed, liberty was conferred in the Applicant to renew his prayer for bail before the High Court, after expiry of period of six months.

Accordingly, he preferred another Bail Application on expiry of

period of six months vide Bail Application No.33/2022 which was decided by this Court on 29.07.2022.

4] A copy of the said order is placed in the compilation annexed to the application and my attention is invited to the said order and I have gone through the same.

By recording that the Application was filed for the second time in the wake of liberty accorded by the Supreme Court , the learned counsel for the Applicant made it clear to the Court that the Application is not filed on the merits of the matter, being conscious of the fact that on earlier occasion it was rejected, by examining its merits. However, release was sought on the ground of prolonged incarceration without trial as it was specifically argued that the said accused was arrested on 31.01.2018 and since four and half years he has remained incarcerated without the trial not even commenced, with the list of approximate 65 witnesses annexed alongwith the charge-sheet which would consume a considerable time .

Reliance was placed on the latest authoritative pronouncement of the Apex Court in the case of ***Union of India vs. K.A. Najeeb, (2021)3 SCC 713***, as well as Division Bench decision of this Court in the case of the ***National Investigation Agency vs. Areeb Ejaz Majeed, Criminal Appeal No.389/2020 dated 23.02.2021***.

5] After carefully perusing observations of the Hon'ble Apex Court in the case of Union of India vs. K.A. Najeeb, where the Apex Court reiterated the right of fair and speedy trial to be integral part of Article 21 and while dealing with the special statute like TADA, NDPS and in the said case, UAPA, it was clearly recorded that presence of statutory restrictions as contained in special statute *per se* do not oust the ability

of constitutional Courts to grant bail on the ground of violation of Part III of the Constitution. It was specifically recorded that restrictions under a statute as well as the powers exercisable under constitutional jurisdiction has to be harmonised.

After making reference to the distinct pronouncement by this Court, both, the Division Bench and the Single Bench, learned Judge recorded as under :

“8 In the present case, as noted above the Applicant has been arrested on 31st January, 2018. The prosecution framed charge against the Applicant on 4th January, 2022 i.e. approximately after 4 years of his arrest and till date not a single witness has been examined by it. Applicant is behind bars without trial for about 4½ years. There are 65 witnesses mentioned in the list of witnesses annexed to the charge-sheet. Though the learned Special PP submitted across the bar that the prosecution may consider to examine 30 to 35 witnesses in totality in support of its case, perusal of Affidavit-in-reply filed by Shri. Savlaram Aagwane dated 20th July, 2022 is silent on that aspect. The minimum punishment prescribed for the offences alleged to have been committed by the Applicant under the provisions of MCOC Act is 5 years. The possibility of conclusion of trial of the present case in near future appears to be remote. Taking into consideration the fact that, Applicant is in custody for more than 4½ years for an offence which is punishable with minimum 5 years of imprisonment and after applying the aforementioned principles of law, the Applicant can be enlarged on bail.”

In the wake of above observations, the accused Anil Patil was released on bail.

6] The learned counsel representing three Applicants seek to derive benefit of the observations reproduced above, by submitting that even they are suffering prolonged incarceration and it was only on 04.01.2022 that charge has been framed. The respective counsels

have given dates of arrest of each of the Applicant, which is noted by me as under :

Sr.No.	ABA No.	Named of Applicant	Date of Arrest
1	2388/2022	Mrugank Kalwallkar @ Micky	27.03.2018
2	2080/2022	Ravi Mallesh Borra @ D.K. Rao	11.10.2017
3	2670/2022	Annadurai Balu Devendra	16.01.2018

All the aforesaid Applicants have thus undergone incarceration more than four and half years and in particular Applicant Ravi Mallesh Borra @ D.K. Rao has undergone incarceration for more than 5 years being arrested on 16.01.2018.

7] The observations of the learned Single Judge in Para 8 while deciding the Bail Application of Accused Anil Patil, which I have reproduced above, apply with equal force to the present Applicants.

8] The learned APP states that the prosecution intends to examine near about 35 witnesses and since till date the actual trial i.e. examination of witnesses has not commenced, one can just imagine the time to be consumed in concluding the trial by examining the witnesses and for recording statements of accused persons under Section 313 of the Cr.P.C., as well as, evidence of the accused persons which they want to set up in their defence.

9] Since the settled position of law is to the effect, that incarceration in custody for longer period pending conclusion of trial is clearly violative of right granted under Article 21 of the Constitution which has been construed to include right to fair as well as speedy trial, I deem it appropriate to release the Applicant on bail.

I must make it clear that I had chosen to secure their liberty not

on examining merits of the matter, but on the ground of prolong incarceration, with the trial likely to take considerable time for its culmination.

10] The observations made above are prima facie in nature and limited for the purpose of determination of the present Application and the learned Judge trying the Applicant for the offences, with which he is charged, shall not in any manner be influenced by the above order.

Hence, following order :

ORDER

- (a) Applications are allowed;
- (b) Applicants - Mrugank Kalwallkar @ Micky (ABA No. 2388/2022, Ravi Mallesh Borra @ D.K. Rao (ABA No. 2080/2022 and Annadurai Balu Devendra (ABA No.2670/2022) shall be released on bail in connection with C.R.No.46/2017 registered with DCB CID (corresponding CR no.435/2017 of Dharavi Police Station) on furnishing P.R. bond to the extent of Rs.1 Lakh each with one or more sureties in the like amount;
- (c) Applicants shall report Dharavi Police Station once in a month on every first Saturday between 11.00 a.m. and 1.00 p.m. till conclusion of trial;
- (d) Applicants shall not leave India without prior permission of Special Court;
- (e) Applicants shall deposit their Passports before the Special Court;
- (f) Applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or

any Police Officer and should not tamper with evidence.

(g) Applicants shall furnish details of their residence to the trial Court as well as to Dharavi Police Station and shall keep them updated if there is any change.

(h) Applicants shall regularly attend trial, on every date, unless exempted.

[BHARATI DANGRE, J]