

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.508 OF 2021

Sahil S/o Dilip Shendre

Versus

State of Maharashtra, through P.S.O., P.S. Bajaj Nagar, Nagpur

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri D.V. Chavan, Advocate for the applicant (Appointed).

Ms Shamsi Haider, A.P.P. for the non-applicant/State.

CORAM : ANIL S. KILOR, J.

DATED : 28/06/2022

1. The applicant is seeking bail in Crime No.76 of 2018, dated 25.05.2018, registered with Police Station Bajaj Nagar, District: Nagpur, for the offences punishable under Sections 307, 143, 147, 148, 149, 504 and 427 of the Indian Penal Code and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (for short "the MCOC Act").

2. Shri Chavan, learned counsel for the applicant submits that the applicant is in jail since last four years. He submits that on grant of sanctioned on 19.11.2018, subsequently, provisions of the MCOC Act came to be added, in this case.

3. He further submits that in the case of *State of Maharashtra Vs. Bharat Shantilal shah*¹, the Hon'ble Supreme Court of India has held that previously registered offences must have same commonness in the offences registered in the present crime. If they do not bear any similarity or commonality to the present crime, they could not be taken into consideration for denying the relief of bail or otherwise.

4. The learned counsel for the applicant has drawn attention of this Court to the crime chart and points out that earlier offences were registered under Sections 323 or 324 of the Indian Penal Code. Thus, there is no commonness in the crime committed by the applicant in the past and crime involved in the present case.

5. He further argues that considering the present status of the trial, there is no possibility that it will be concluded in near future. Thus, he submits that as the applicant has already in jail for the substantive period, he may be released on bail.

6. Shri Chavan, learned counsel for the applicant further points out that five co-accused persons have already been released on bail and as such, he submits that the applicant is entitled for grant of bail on parity.

1 2008 13 SCC 5

7. On the other hand, Ms Shamsi Haider, learned APP opposes the present application. She submits that offence is serious and the provisions of the MCOC Act have been applied to the present applicant, on receiving sanction.

8. The learned APP further submits that the compliance of Section 21(4) of the MCOC Act is necessary, while granting bail to the applicant.

9. She further submits that there is a CCTV footage and furthermore, the statements of eye witnesses are sufficient to show the involvement of the applicant in the alleged offence.

10. She submits that as the injury report shows that the injured had sustained grievous injuries, the prayer for grant of bail may not be considered.

11. I have perused the charge-sheet, crime chart and also the contents of the First Information Report (FIR).

12. The crime chart shows that offences committed during the period of 2015-18. Except the present crime all other crimes are under Sections 323 or 324. Whereas, in the present matter the offence is under Section 307.

13. Five accused persons have already been released on bail and the provisions of the MCOC Act were applied to them as well.

14. As far as other crimes are concerned, which were registered against the applicant, *prima facie* it appears that those were committed by him in his individual capacity, as there is nothing to show that it was committed by the applicant as a members of the organized crime syndicate of which the accused No.1 is a leader. Thus, it is a matter of trial whether the pre-requisites to apply provisions of the MCOC Act are present in the case of the applicant.

15. Moreover, the other offences have nothing in common with the present matter or it doesn't reasonably show that the applicant is having tendency to commit similar offences, if released on bail.

16. The Hon'ble Supreme Court of India, in the case of **Union of India vs K.A. Najeeb**² has observed thus:-

“15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) V/s Union of India, it was held that undertrials cannot

2 (2021) 3 SCC 713

indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of UAPA per se does not oust the ability of constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

17. In support of his submission, learned counsel for the applicant has placed reliance upon the judgment in

the case of *Bhupendra @ Golu S/o Suryakant Borkar v. State of Maharashtra*,³ has observed thus:

"5. On going through the judgment rendered in the case of Bharat Shantilal Shah (supra), I find that the Hon'ble Apex Court has in no uncertain terms laid down that for considering the grant of bail or otherwise to a person accused of an offence punishable under the provisions of the MCOC Act, one of the important criteria is the possibility of committing a similar offence and that this criteria cannot be examined on the touchstone of mere registration of the offences in the past. The Hon'ble Apex Court has held that the offences previously registered must have something in common with those under the MCOC. The relevant observations of the Hon'ble Apex Court as they appear in paragraph 64 are reproduced as under:

"64. We consider that a person who is on bail after being arrested for violation of law unconnected with MCOCA, should not be denied his right to seek bail if he is arrested under MCOCA, for it cannot be said that he is a habitual offender. The provision of denying his right to seek bail, if he was arrested earlier and was on bail for commission of an offence under any other Act, suffers from the vice of unreasonable classification by placing in the same class, offences which may have nothing in common with those under MCOCA, for the purpose of denying consideration of bail. The aforesaid expression and restriction on the right of seeking bail is not even in consonance with the object sought to be achieved by the Act and, therefore, on the face of the provisions this is an excessive restriction."

3 2016 SCC OnLine Bom 5330

6. It would be obvious from the law laid down by the Hon'ble Apex Court that the nexus between the previous offences and the present crime can be seen not only on the basis of some of the co-accused also being involved with the applicant in the previous offences, but also in the light of commonality between the previously registered offences and the present crime.

7. In the instant case, it can be seen from the crime chart reproduced in the reply of the prosecution that there were five crimes previously registered against the present applicant and out of these five crimes, at least in three crimes, some of the co-accused including the leader of the crime syndicate Virendra alias Gijrya Lonare were involved along with the applicant. The involvement of some of the present co-accused of the applicant also in the previous crime is one of the criteria for considering the possibility of the applicant committing similar offence, as held by this Court in the case of Dinesh Bhondulal Baisware (supra). Now, drawing further guidance from the law laid down by the Hon'ble Apex Court in the case of Bharat Shantilal Shah, which case was not cited earlier and so was not considered previously by this Court, it has also to be held that previously registered offences must have some commonness with the offences registered in the present crime. If they do not bear any similarity or commonality to the present crime, they could not be taken into consideration for denying the relief of bail or otherwise the classification notionally made by putting previous offences in the same class as the present crime, as held by the Hon'ble Supreme

Court, would suffer from the vice of unreasonableness.

8. From the crime chart, I find that in all the five crimes namely Crime Nos.330/2009, 27/2011, 161/2012, 280/2012 and 4611/2012, no offence punishable under Section 307 of the Indian Penal Code, 1860 was involved and apparently all the offences except the one punishable under Section 364 of the Indian Penal Code, 1860 appeared to be lesser offences committed under various sections of the Indian Penal Code. It is also seen that barring the offence punishable under Section 364 of the Indian Penal Code, 1860 the maximum punishment for all these offences was of three years and for the offence punishable under Section 364 of the Indian Penal Code, 1860 this applicant has been acquitted. This would show that these offences were neither grave nor had anything in common with the main offence presently registered against the applicant. It would then follow that the applicant could not be reasonably said to be having a tendency to commit similar offence, if released on bail.

18. In the above referred backdrop, as it *prima facie* appears that earlier offences were not committed by the applicant as a member of syndicate but they were committed individually and further considering the fact that there is no commonness in the earlier offences and the present offence, I am of the opinion that in the light of the fact that the applicant is in jail since last four years and there is no possibility that the trial will be concluded in near future, the applicant is entitled for grant of bail.

Furthermore, five co-accused persons are already released on bail, as such the applicant is entitled for parity.

19. In the circumstances, as there is material to reasonable believe, that the applicant will not commit the similar offence, if he is released on bail, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that the applicant shall be released on bail in Crime No.76 of 2018, registered with Police Station Bajaj Nagar, District: Nagpur, for the offences punishable under Sections 307, 143, 147, 148, 149, 504 and 427 of the Indian Penal Code and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999, on furnishing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.
- c) The applicant shall attend the concerned Police Station on 1st and 16th day of each month till the culmination of the trial.
- d) The applicant shall not tamper with the prosecution witnesses.

- e) The applicant shall not leave the jurisdiction of the concerned Police station without permission of the Court.
- f) The State is at liberty to apply for cancellation of bail, if the applicant commits same offence.
- g) Fees of the learned counsel for the applicant is quantify as per rules.

The criminal application is **disposed of**, accordingly.

[ANIL S. KILOR, J.]