

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

CRIMINAL APPLICATION (BA) NO.783 OF 2022

MOHD. IRFAN S/O PIR MOHD. KHAN VS THE STATE OF MAH. THR. PSO PS TAHSIL NAGPUR

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri C.S.Kaptan, Sr.Advocate a/b. Shri Alpesh Deshmukh, Adv. for Applicant.
Shri S.A. Ashirgade, A.P.P. for Non-applicant /State.

CORAM : ANIL S. KILOR, J.
DATED : SEPTEMBER 12, 2022.

1. Heard.
2. By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Special MCOCA Case No. 5 of 2018, arising out of Crime No.340 of 2017, registered with Police Station, Tahsil, Nagpur City for the offences punishable under Sections 307, 506-B, 120-B read with Section 34 of the Indian Penal Code, Sections 4 and 25 of the Arms Act and Section 3(1)(iii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as the "MCOC Act").
3. Shri Kaptan, learned Senior Advocate submits that though the offence is registered against the applicant under Section 307 of the Indian Penal Code, the injury report shows that there was only one abrasion and it was of simple nature. He points out that the complainant was not even required to be hospitalized for a day. He,

therefore, submits that Section 307 of the Indian Penal Code will not attract in this case.

4. He further submits that the applicant is in jail for about four and half years and considering the maximum punishment for the other offences, the applicant has already undergone substantive incarceration. He, therefore, submits that the applicant may be released on bail.

5. It is lastly argued that though the provisions of the MCOA Act are invoked in this case, considering the evidence collected by the Investigating Officer, there is a reason to believe that the applicant is not guilty of the alleged offence.

6. On the other hand, the learned A.P.P. strongly opposed the application and submits that as there are criminal antecedents against the applicant and he had committed similar offences, this Court may not grant bail to the applicant.

7. I have perused the Charge-Sheet and the application.

8. The allegations made in the F.I.R. *prima-facie*, show that the applicant was instigating the co-accused for assault. The injury report shows that a simple injury was

caused to the complainant and not the injury which endangered the life of the complainant.

9. The applicant was arrested on 08.02.2017 and as such the applicant is in jail for last more than four and half years. Considering the nature of the injury, *prima-facie*, it is doubtful whether Section 307 of the Indian Penal Code would attract in this case and in that event the maximum punishment for the other offences would not be more than 7 years. Thus, it can be said that the applicant has already undergone substantive incarceration.

10. In the case of *Union of India ..vs.. K.A. Najeeb*, reported in **(2021)3 SCC 713** the Hon'ble Supreme Court of India, 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 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 the 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.”

11. In the light of the above referred observations made by the Hon’ble Supreme Court of India, I am of the opinion that as the applicant is in jail for a substantive period and as there is no likelihood that the trial will commence in near future, on this count also the applicant is entitled to be enlarged on bail.

12. Considering the allegations made against the applicant in the F.I.R. coupled with the evidence collected by the Investigating Officer during the investigation, I am of the opinion that there is a reasonable ground to believe that the applicant is not guilty of the alleged offence. Moreover, I am of the opinion that as far as apprehension that he may repeat the offence, the said apprehension can be addressed by imposing certain stringent conditions. Accordingly, I pass the following order:

- i) The application is **allowed**.
- ii) It is directed that the applicant shall be released on bail in Special MCOCA Case No.5 of 2018, arising out of Crime No.340 of 2017, registered with Police Station, Tahsil, Nagpur City, for the offences punishable under Sections 307, 506-B, 120-B read with Section 34 of the Indian Penal Code, Sections 4 and 25 of the Arms Act and Section 3(1)(iii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999, on his furnishing P.R. Bond in the sum of Rupees Twenty Five Thousand with one solvent surety in the like amount.
- iii) The applicant shall not enter the territorial jurisdiction of Nagpur District, till culmination of trial, except for the trial.

iv) The applicant shall provide his address along with the name of nearest police station which he shall attend on every Monday and Thursday between 10.00 a.m. and 12.00 noon, till culmination of trial, except on the date of the trial.

v) The applicant shall attend the trial on each and every date before the Special Court unless exemption is granted by the Special Court.

vi) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence.

vii) Liberty is granted to the State to apply for cancellation of the bail, in case of breach of any condition or if the applicant repeats similar offence or commits any other serious offence.

The Criminal Application is **disposed of** in the above terms.

JUDGE