

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

CRIMINAL BAIL APPLICATION (BA) NO. 1170 OF 2021

Chandan s/o Omprakash Chaudhari, V/s The State of Maharashtra, thr. PSO, PS Sitabuldi, Tah. & Dist. Nagpur.

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

Court's or Judge's Order

Shri S.P. Dharmadhikari, Senior Counsel a/b Shri R.Bhandakkar, counsel for Applicant.
Shri P.P. Chavhan, Special PP for the State/Non-applicant.

CORAM : ANIL S. KILOR, J.

DATE : 25TH July, 2022

1. The applicant is seeking bail in Crime No. 676 of 2019, dated 12/10/2019 registered with Police Station, Sitabuldi, Tah. and Dist. Nagpur, for the offences punishable under Sections 420, 467, 468, 471, 384, 386, 506(2), 120B read with Section 34 of the Indian Penal Code, 1860 and under Section 3(1)(i)(ii), 3(2), 3(4), 3(5) and 4 of the Maharashtra Control of Organized Crime Act, 1999 (for short 'MCOC Act')
2. Heard Shri S.P. Dharmadhikari, learned Senior Counsel assisted by Shri R.Bhandakkar, counsel for the applicant and Shri P.P. Chavhan, Special PP for the non-applicant/State.
3. One Mr. Jigar Pareshbhai Patel lodged the report dated 12/10/2019 with the Sitabuldi Police Station, Nagpur, alleging that Santosh Ambekar, Bhaiyabhai, Ramesh Patel, Balaji Angadiya, Rajput @ Salim and their

associates extracted Rs. 5 Crores from Mr. Jigar Pareshbhai Patel on the basis of fabricated documents of title and then demanded extortion amount of Rs. 1 Crore, which demand was accompanied by threats to kill the complainant and his family.

4. Shri S.P. Dharmadhikari, learned Senior Counsel argues that this Court has rejected the first bail application of the applicant, vide order dated 04/01/2021. However, the findings recorded by the co-ordinate bench of this Court while passing the order dated 09/11/2020, granting bail to the co-accused, were not pointed out to this Court.

5. It is submitted that, on rejection of the first application a period of one and half years is lapsed but there is no progress in the trial.

6. It is further contended that, there is no bar to move successive application for grant of bail on the ground of change in circumstances or for the reason that some material was not pointed out at the time of deciding first application.

7. Learned Senior Counsel further argues that, the applicant is in jail since 18/10/2019 i.e. for about three years, which is a substantive period.

8. He further submits that, as the applicant has already undergone substantive period of incarceration and as there is no likelihood that the trial will be concluded within a reasonable time, this Court may release the

applicant on bail otherwise, it would amount to pre-trial punishment. The learned Senior counsel for this purpose has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Union of India V/s K.A. Nazim*¹

9. He further submits that, there is nothing on record to show that the applicant is indulged in any unlawful activity which can be termed as organized crime. He further points out that, there are no criminal antecedents to the discredit of the applicant.

10. It is submitted that, the allegation against the applicant is that, he was present in the meeting wherein the conspiracy against the complainant, was hatched. It is submitted that, there is nothing to show that the applicant was the part of the said conspiracy. Accordingly, he submits that there is a reasonable ground to believe that the applicant is not guilty of the alleged offence.

11. He submits that, if the confessional statement of the applicant is considered, in its totality, it can be seen that the applicant was under financial obligation and also he was under fear of the main accused Santosh Ambekar. It is submitted that, the prosecution while opposing the present application, is not relying upon the confessional statement of the applicant as a whole but relying upon certain parts of it in isolation as per their convenience.

12. On the other hand, Shri Chavhan, learned Special PP for the State heavily relied upon confessional

statement of the applicant and co-accused and submits that it is sufficient to show the involvement of the applicant in the alleged offence, as a member of syndicate.

13. Shri Chavhan, learned Special PP submits that, in this case, the applicant is the conspirator and therefore, he cannot ask for parity, as he is not similarly circumstanced with the co-accused who has been granted bail. To substantiate his submission, he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Shri Mahadev Meena V/s Raveen Rathore and another dated 27/09/2021 passed in Criminal Appeal No. 1089/2021*.

14. He further submits that, as the first application was rejected, this successive application cannot be entertained unless there is change in fact situation or law warrants fresh consideration. In support of his submission he has placed reliance on the judgment of the Supreme Court of India in the case of *G.R. Ananda Babu V/s The State of Tamil Nadu* and another² and the judgment of the Principal seat of this Court in the case of *Vicky @ Victor Julias Manthera & others.. V/s State of Maharashtra*³.

15. He lastly argues that the Hon'ble Supreme Court of India, time and again explained the factors which are to be considered by the Court before granting bail. He submits that, if these factors are considered, no case is

2 Arising out of SLP (Cri) No. 213/2021 dt. 28.1.2021

3 2009 ALL MR (Cri) 1444

made out by the applicant for grant of bail.

16. I have perused the Charge-sheet and the FIR.

17. In this case, first application of the applicant for grant of bail was rejected by this Court vide, order dated 04/01/2021. Thereafter, though a period of more than one and half years is lapsed, there is no progress in the trial. The said fact is significant in the light of the fact that, the applicant is in jail from last three years i.e. for a substantive period.

18. In the case of *Babu Singh Vs State of Uttar Pradesh*⁴, the Hon'ble Supreme Court of India has considered the issue of maintainability of successive application for grant of bail. The Hon'ble Supreme Court of India has held thus:-

"2. Briefly we will state the facts pertinent to the, present petition and prayer and proceed thereafter to ratiocinate on the relevant criteria in considering the interlocutory relief of bail. Right at the beginning, we must mention that, at an earlier stage, their application for bail was rejected by this, Court on September 7, 1977. But an order refusing an application for bail does not necessarily preclude another, on a later occasion, giving more materials, further, developments and different considerations. While we surely must set store by this circumstance, we cannot accede to the faint plea that we are, barred from second consideration at a later stage. An interim direction is not a conclusive adjudication, and updated reconsideration is not overturning an earlier negation. In this view, we entertain the application and evaluate the merits pro and con.

19. Similarly, the Hon'ble Supreme Court of India in the case of *Rani Dudeja Vs State of Haryana*⁵, has held thus :-

“3. We are afraid, the stand taken by the High Court cannot be appreciated. The petition was for anticipatory bail and the one which had been filed earlier might have been withdrawn in a given situation, without inviting the Court to consider the same on merits. On change of circumstances, when another application under Section 438 CrPC was filed, the High Court should have considered the same on merits. The principle of res judicata could not have operated in an application for bail.”

20. Thus, the Hon'ble Supreme Court of India in the above referred judgments held that the successive application by giving more details, is maintainable.

21. Thus, considering the above referred judgments of the Hon'ble Supreme Court of India and the fact that the observations made by the Co-ordinate Bench of this Court in the case of co-accused, while granting bail, had not been pointed out coupled with the fact that, there is no progress in trial and the applicant is in jail for substantive period, I proceed to consider the request of the applicant for grant of bail.

22. In this case, the prosecution is mainly relying upon the confessional statement of the applicant, which was recorded on 30/10/2019. The applicant, however, retracted last five lines of para-2 on page-3 of part-2 of the confession, relating to the allegation that the applicant

attended the meeting held in 'Hotel West In', Mumbai, wherein a conspiracy was hatched against the complainant.

23. However, the prosecution's whole case is based on the allegation that the applicant attended a meeting held in 'Hotel West In', Mumbai, with some co-accused and the gang leader Santosh Ambekar, wherein a conspiracy was hatched against the complainant.

24. Section 18 of the MCOC Act makes confession made to Police Officer admissible as substantive evidence, and the provision start with a non-obstante clause which over rights in consistent or contrary in the Code of Criminal Procedure and the Indian Evidence Act, 1872, the legislative intend was to dilute the rigor of Section 162 of the Code and Sections 25 and 26 of the Indian Evidence Act, 1872.

25. In the said backdrop, if the confessional statement of the applicant is considered in a holistic manner, *prima-facie*, it can be seen that the applicant was provided finance by the main accused Santosh Ambekar for his business and subsequently the main accused Santosh Ambekar established amorous relations with the wife of the applicant. From the confessional statement further it can be seen that the applicant was continuously under the fear and obligation of main accused Santosh Ambekar, as he could not pay back the amount provided

by the main accused, for business.

26. However, there is nothing to suggest that there are criminal antecedents against the applicant as a member of the gang or syndicate. Except the present crime, there is no crime registered against the applicant.

27. Moreover, except the allegations that, he attended the meeting held in 'Hotel West In', Mumbai and subsequently he met one Ajay as Bhaiyabhai on the instructions of Santosh Ambekar, to ask him to transfer Rs. 4 Crore 45 Lakhs to Nagpur and Rs. 50 Lakhs to Nashik, there are no allegations wherefrom, *prima-facie* it can be gather that he was and is a member of the syndicate of which Santosh Ambekar is a gang leader.

28. If the confession statement has to be taken into consideration, it has to be taken as a whole and not in part or in isolation. In the confessional statement, the applicant has narrated the situation and the circumstances in detail, in which he got stuck due to financial obligation, fear and threats of the main accused Santosh Ambekar. It further *prima-facie* shows that there was no motive of the applicant to commit offence.

29. The coordinate bench of this Court while granting bail to the co-accused Rajendra s/o Gulabrao Armarkar, has dealt with the scope, width and amplitude of the rigors of Section 21(4) of the MCOC Act and has held thus:-

20. The scope, width and amplitude of the rigors of Section 21(4) of the MCOC Act fell for

consideration before the Apex Court in Ranjitsing Brahmajeetsingh Sharma v. State of Maharashtra and another, (2005) 5SCC 294.

21. The Apex Court articulated that, as held in Narendra Singh and Another v. State of M.P., (2004) 10 CC 699, presumption of innocence is a human right and that the expansive meaning judicially assigned to the guarantee to life enshrined in Article 21 of the Constitution of India envisages not only protection of life and liberty, but a fair procedure. The Apex Court then proceeded to observe that Section 21(4) of the MCOC Act must be interpreted keeping in view the aforementioned salutary principle.

It would be fruitful to reproduce paragraph 38 of the said decision, which reads thus :

“38. We are furthermore of the opinion that the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the Court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the Court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission,

negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The Court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision.

22. The Apex Court opined that the restriction on the power of the Court to grant bail should not be pushed too far and bail may be granted if the Court, having regard to the material brought on record is satisfied that in all probability the accused may not be ultimately convicted.

23. The Apex Court then articulated that the provisions of the MCOC Act must receive a strict construction to muster the test of reasonableness and proceeded to note that Section 21(4) of the MCOC Act does not make any distinction between an offence entailing life imprisonment and an offence entailing imprisonment for a year or two. The Apex Court further held that in case of circumstantial evidence, not only culpability or mens rea should be prima facie established the Court must also consider the question as to whether the circumstantial evidence is such as would complete all the links in the chain.

24. The Apex Court further opined that the Court is not expected to render a positive finding that the accused has not committed an offence under the Act nor to record a finding as to the possibility of the accused committing a crime after grant of bail. Notably, the Apex Court articulated that the offence in futuro must be an offence under the MCOC Act and not any offence.

25. The Apex Court further articulated that

while the evidence may not be weighed meticulously and the finding may rest on the basis of broad probabilities, having regard to the provisions of Section 21(4) of the MCOC Act, the Court may have to probe into the matter deeper so as to enable it to arrive at a finding that the material collected against the accused may not justify a judgment of conviction.

26. *The MCOC Act is not the only special enactment which seeks to restrict the power of the Court to grant bail. Similar restrictions and rigors are provided by several special enactments and an illustrative reference may be made to Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 212(6) of the Companies Act. The provisions akin to Section 21(4) of the MCOC Act are considered and analysed in several decisions and the crystallized position of law appears to be that while the accused is required to make out a case, which goes beyond 'a prima facie case', it is not expected of the accused to satisfy the Court that acquittal is inevitable. The satisfaction, which is envisaged, is the satisfaction of the Court that on broad probabilities, the material collected during investigation may not culminate in conviction. Implicit in the exercise is the permissibly to consider the defence of the accused.*

27. *The rigors of Section 21(4) and the fetters on the power of the Court to grant bail are not unshackled merely on demonstrating a prima facie case. Reasonable grounds to arrive at the satisfaction that the accused may not be convicted of the offence contemplate that on the basis of the material collected during investigation the court must be satisfied that there are substantial probable causes to arrive at such satisfaction. Axiomatically, while the accused is not expected to demonstrate that acquittal is a forgone conclusion, the material on record must impel the Court on broad*

probabilities to arrive at the satisfaction that the accused may not be ultimately convicted."

30. In the teeth of the above observation, I revert back to the facts of this case. In this case, nothing has been pointed out to show the involvement of the applicant in any other offence along with the gang leader Santosh Ambekar, or that the applicant has committed any offence individually as a member of the syndicate.

31. There are no criminal antecedents against the applicant.

32. The Hon'ble Supreme Court of India in the case of K.A. Nazim (supra), has held thus:-

17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of 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 the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

18. Adverting to the case at hand, we are

conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected."

33. Even considering the confessional statements of co-accused including wife of the applicant, *prima-facie*, there is nothing to show that in the alleged meeting held at 'Hotel West In', Mumbai, the applicant was present as a conspirator. On the contrary, the confessional statements of co-accused persons, speak otherwise.

34. Thus, mere on the fact of presence of the applicant in the said meeting without considering the confessional statements holistically, *prima-facie* the applicant has been roped into the alleged offence, labelling him as a conspirator and the member of the syndicate.

35. There is no dispute about the law laid down by the Hon'ble Supreme Court of India in *Mahadev Meena (supra)* on the point of parity. In this case, apart from parity I have considered the case on its own merit.

36. As far as the judgment in the case of *Kalyan Chandra Sarkar V/s Rajesh Ranjan*⁶ of the Hon'ble Supreme Court of India and the judgment of this Court in Criminal Application No. 884/2008, are of no use to the non-applicant in view of the judgment in the case of *Babu Singh* and others and *Rani Dudeja (supra)* of the Hon'ble Supreme Court of India, which I have discussed in the beginning part of reasoning.

37. The judgment of the Hon'ble Supreme Court of India in the case of *G.R. Ananda Babu (supra)* on the point of successive anticipatory bail, the same is distinguishable of facts. Accordingly, it will be of no help to the non-applicant.

38. In that view of the matter, in absence of any *prima-facie*, cogent evidence to show that the applicant is a member of the syndicate of which Santosh Ambekar is a gang leader and considering the confessional statement of the applicant by adopting a holistic approach, I am of the opinion that there is a reasonable ground to believe that the applicant is not guilty of alleged offence and he will not commit similar offence, if he is released on bail. Accordingly, I pass the following order :

- a) The criminal application is **allowed**.
- b) It is directed that in Crime No. 676 of 2019, dated 12/10/2019 registered with Police Station, Sitabuldi, Tah. and Dist. Nagpur, for

the offences punishable under Sections 420, 467, 468, 471, 384, 386, 506(2), 120B read with Section 34 of the Indian Penal Code, 1860 and under Section 3(1)(i)(ii), 3(2), 3(4), 3(5) and 4 of the Maharashtra Control of Organized Crime Act, 1999, the applicant shall be released on bail 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 every 1st and 16th day of each month between 10.00 a.m. to 12.00 noon, till the culmination of trial.
- d) The State is at liberty to apply for cancellation of bail, in case of breach of any condition or the applicant commits any similar offence.

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

[ANIL S. KILOR, J.]

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