

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 1340 OF 2023

NANNA @ AJIT GUJRAJ SAVANI
VERSUS
THE STATE OF MAHARASHTRA

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MR.S.S. Kazi with Mr. M.N. Shaikh, Advocate for applicant.
Mr. S.P. Deshmukh, APP for respondent.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 11th September, 2023

ORDER :-

The applicant seeks regular bail in connection with Crime No. 36 of 2017 registered with MIDC police station, Ahmednagar for the offences punishable under Sections 304, 328 r/w. 34 of IPC and sections 65(a), (b), (c), (d), (e)(f), 68(a) (b), 80 (1)(2) of the Maharashtra Prohibition Act and section 3(1)(i)(ii), 3(2), 3(4) and 4 of the Maharashtra Control of Organized Crime Act (MCOCA).

2. On information given by one Baban Rangnath Avhad, the investigation was set in motion. It is alleged that in the month of February, 2017, election campaign for Zilla Parishad and Panchayat Samiti election was going on. Accused No.1 Bhagyashri Mokate and Mangal Avhad were the candidates in fray for the election of Zilla Parishad block and Panchayat Samiti, Jeur. The husband of the candidate had arranged a dinner for the party members and voters. The liquor was

served to the persons who attended the dinner. The brothers of the informant, namely, Popat Avhad and Dilip Avhad had consumed liquor. However, on the next day, they started vomiting. They were admitted to the hospital. However, they lost the life. During the investigation of crime, it is transpired that liquor served at the dinner was poisonous. Even at some other places, such liquor was consumed. As many as 20 accused persons are arrested. The applicant came to be arrested on 1st March, 2017. Since then, he is behind bars. The application for grant of bail filed by the applicant below Exh.441 in Special Case MCOCA No. 570 of 2020 came to be rejected on 19.10.2022.

3. Mr. Kazi, learned advocate appearing for the applicant would submit that the allegations against the applicant are not as regard to manufacturing of liquor. However, he is alleged to have procured 100 Litres waste solvent containing methanol from S.V. Traders at Pune and supplied the same to accused No. 11 and 7. It is further alleged that he has also supplied duplicate liquor bottle caps and seals of different brands of country and foreign liquor.

4. Mr. Kazi would further submit that although offences under the MCOCA Act are invoked, it could not be applied against the applicant. He would invite attention of this Court to the term "Organized Crime Syndicate" as defined under the MCOCA Act. He would further submit that no previous offence is registered against the applicant. He is not alleged to have been involved in continuing unlawful activity in the past. No charge sheet is filed against him in any such offence punishable with imprisonment for 3 years or more. In that view of the matter, the provisions of MCOCA Act cannot be invoked against the applicant. He

would further submit that the applicant is behind bars since 1.3.2017. The trial has not been commenced till this date. It may take its own time. He would further submit that the co-accused are already released on bail. He would invite attention of this Court to the order dated 26.11.2021 passed by this Court in respect of accused Sonu Duggal in Bail Application No. 629 of 2021 and submit that the allegations against the applicant in that case, arising out of the self same crime was that, he had supplied empty bottles of Officers Choice brand and he has been enlarged on bail by this Court. As such, he urged that the applicant is entitled for bail by invoking the principle of parity.

5. Per contra, learned APP strongly opposes the application. He would submit that the offence is serious. As many as 9 persons have lost lives because of the supply of spurious liquor. He would submit that the provisions of MCOCA Act are invoked. The confessional statements of accused No.7 Mohan and accused No.11 Sonu have been recorded before the competent officer under Section 18(1) of the MCOCA Act. Those statements clearly depict that the applicant had supplied waste solvent and duplicate labels and seals of the liquor bottles. Learned APP would also invite attention of this Court to the offences registered against the applicant and submit that the applicant is not entitled for grant of bail.

6. Having considered the submissions advanced, apparently, the applicant has been arrested on 1.3.2017. Since then, he is behind bars. Period of more than six and half years has been elapsed. Till this date, the trial could not be commenced in the subject crime. The offences charged are punishable with imprisonment up to 10 years. The applicant has already undergone incarceration for more than 50% of the period of

sentence that could be awarded against him in case of his conviction.

7. So far as the role of the applicant in commission of the offence is concerned, he is not directly involved in manufacturing of spurious liquor. The allegation against him is that he has supplied spirit waste solvent which was procured by him from S.V. Traders at Pune. Similarly, the allegation is made that he has provided fake labels of different brands of country and foreign liquors. Pertinently, accused Sonu Duggal, who was arrested with similar allegations has been released by this Court vide order dated 26.11.2021. While allowing the application of the said accused, this Court observed in para.11 as under :-

“11. When the facts of this case are analyzed on the touchstone of the principles laid down in the aforesaid cases (supra), it reveals that the provisions of the MCOC Act cannot be invoked in the case in hand. Admittedly, no offence was registered against the applicant prior to the offence in question. Mere registration of the offence is not enough. Requirement is that charge sheet ought to have been filed and cognizance of the offence ought to have been taken by a competent court. These basic requirements are not fulfilled. Subsequent registration of the offence is not a criteria for making stringent provisions of MCOC Act applicable.”

8. Pertinently, the learned APP relied upon last 5 offences registered against the applicant. Perusal of the date of registration of those offences reveals that all such offences are registered subsequent to the arrest of the applicant in this crime. Learned APP fairly admits that

no prior offence has been registered against the applicant. In that view of the matter, it is difficult to uphold the contention of the prosecution that the provisions of MCOC Act can be invoked in this case against the applicant. Once prima facie finding is recorded that the provisions of the MCOC Act are not attracted in facts of the case, the confessional statement of co-accused recorded under Section 18(1) of the Act, would not be of any significance while considering the merits of the case, as against the applicant.

9. The Supreme Court of India in the matter of ***Mohd. Muslim @ Hussain Vs. State (NCT of Delhi) (1980)1 SCC 81***, while considering the provisions of the NDPS Act, and special conditions within constitutional parameters observed that, when the Court is reasonably satisfied on prima facie look at the material on record that accused is not guilty, the courts are empowered to grant bail. Similarly, it is observed that restriction under the special statutes will have to be applied keeping in mind the constitutional mandate under Article 21 of the Constitution of India. It is observed that, if trials are not concluded in time, injustice wrecked on the individual is immeasurable. Incarceration has further deleterious effects. The Courts therefore have to be sensitive of these aspects.

10. Applying the aforesaid principles to the facts of the present case, particularly when the applicant is in jail for more than six and half years, he would be entitled for enlargement on bail. Even on applying the principle of parity, a case is made out for release of the applicant on bail. Hence, the following order :-

O R D E R

- (i) The application is allowed.
- (ii) Applicant – Nanna @ Ajit Gujraj Savani, be released on bail on furnishing PB. and S.B. of Rs. 1,00,000/- (rupees one lakh) with one solvent surety of the like amount, in connection with Crime No. 36 of 2017 registered with Police Station MIDC Police Station, Ahmednagar, for the offences punishable under Sections 304, 328 r/w. 34 of IPC and sections 65(a), (b), (c), (d), (e)(f), 68(a) (b), 80 (1)(2) of the Maharashtra Prohibition Act and section 3(1)(i)(ii), 3(2), 3(4) and 4 of the Maharashtra Control of Organized Crime Act (MCOCA) on the following conditions :-
- (a) He shall not make attempt to contact any witness in the charge sheet and shall not tamper with the prosecution evidence.
- (c) He shall attend the trial on each and every effective date.
- (d) He shall not leave the State of Maharashtra without prior permission of the Special Court.
- (e) He shall visit MIDC Police Station, Ahmednagar once on 17th of every Month between 10.00 a.m. and 2.00 p.m. till conclusion of trial.
- (d) He shall update about his address and contact number with the concerned police station.
- (iii) Application stands disposed of accordingly.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-