

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

BAIL APPLICATION NO. 1741 OF 2023

Bhimraj S/o. Genu Avhad,
Age 55 years, Occ. Nil
R/o. Kamalkunj Apartment,
Flat No. 2, Namdeo Chowk,
Savadi, Tq. and Dist. Ahmednagar .. Applicant

Versus

The State of Maharashtra .. Respondent.

Mr. S.S. Kazi, Advocate for the applicant,
Mr. K.S. Patil, APP for State.

CORAM : S.G. CHAPALGAONKAR, J.

**RESERVED ON : 20th October, 2023
PRONOUNCED ON : 25th October, 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 counsel for the applicant would submit that the role of the applicant is limited in the offense. He is alleged to have procured wine for serving on the instructions of the accused Nos. 1 to 3 from accused nos. 7 to 9. He would submit that the applicant has been arrested on 14.2.2017 and since then he is behind bars. He would submit that similarly situated accused persons have been enlarged on bail in present crime. As such, he seeks enlargement of the applicant on the ground of parity and secondly, on the ground of that prolonged incarceration period thereby violating the right of the accused under Article 21 of the Constitution of India.

4. Learned APP strongly opposes the prayer. He would submit that the offences are serious because of serving of spurious country liquor persons have lost their lives. Previous bail petitions of the applicants are rejected on merit up to the Supreme Court. Even the application for

release on bail during COVID pandemic has been rejected. Hence, he prayed for rejection of the application for grant of bail.

5. Having considered the submissions advanced, apparently, the applicant is behind bars since 14.2.2017 and suffered incarceration for six and half years by this time. The trial is prolonged and moving with a snail speed. The role attributed against the applicant is that he has brought the spurious liquor for serving in the get-together/party arranged during the elections campaign of the Zilla Parishad. Pertinently, the issues as regards to the merit of the case would be decided in trial and this Court would not be observing anything on merit. However, fact remains that co-accused Sonu Duggal is released on bail by order of this Court in ***Bail application No. 629 of 2021*** observing that the provisions of the MCOC Act cannot be invoked in the case in hand. It can be observed that nothing is placed before this Court to show that the applicant has committed the offences being the member of the syndicate so as to attract the provisions of the MCOC Act.

6. The second contention advanced on behalf of the applicant is that, the applicant is behind bars for more than six and half years. The right to speedy trial is recognized as fundamental right under Article 21 of the Constitution of India. Indefinite incarceration of the under-trial accused is deprecated holding that the delay in criminal violates right guaranteed under Article 21 of the Constitution of India. Constitutional mandate is given precedence over statutory bars for granting bail under various statutory provisions. In the matter of ***Umarmia Vs. State of Gujarat (2017)2 SCC 731***, the Supreme Court of India laid down certain guidelines for grant of bail to the under-trial prisoners even in cases

under special statutes. *This Court in another **Bail Application bearing No. 1340 of 2023 filed by another accused Nanna @ Ajit Gajraj Savani** made similar observations and directed enlargement of the co-accused on bail accepting the proposition that the indefinite incarceration of the under-trial accused cannot be permitted. Such observations are based on the law laid down by the Supreme Court of India in the matter of **Mohd. Muslim @ Hussain Vs. State (NCT of Delhi) (1980)1 SCC 81**.* In that view of the matter, keeping in mind ratio of supreme court judgments in several matters deprecating indefinite incarceration of under trial prisoners a case is made out for grant of bail, however, subject to certain conditions.

ORDER

- (i) The application is allowed.
- (ii) Applicant – Bhimraj S/o. Genu Avhad, be released on bail on furnishing P.B. 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/-