

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 2830 OF 2022

Sachin Damodar Ekhatpure	...Applicant
Versus	
The State of Maharashtra	...Respondent

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Mr. Satyavrat Joshi a/w Mr. Nitesh Mohite i/by Samay S. Pawar,
Advocate for the Applicant.

Mr. M. G. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 31st JANUARY 2023

PC :

1. Applicant is seeking bail in connection with C.R. No. 517 of 2016 registered with Akhuj Police Station, Solapur Rural for offences punishable under Section 307 read with 34 of the Indian Penal Code and Section 3(25) of the Arms Act. Subsequently charge under Section 307 altered to Section 302 of IPC. During the course of investigation provisions of MCOC Act were invoked under Sections 3(1)(i), 3(2), 3(3), 3(4) of Maharashtra Control of Organised Crime Act, 1999 (for short 'MCOC Act').

2. The case of the prosecution is that, the FIR was lodged by Aniket Jalinder Umbre on 29th December 2016. It is alleged that,

the complainant and his maternal uncle Nanasaheb Dilip Aasbe were talking in front of Ashwini Hotel. Two persons aged about 25 years arrived there on motorcycle with mask on their faces. They fired at Nanasaheb Aasbe. He tried to run from the place of incident. The accused again fired at him. Nanasaheb Aasbe succumbed to the injuries. On completing investigation, charge-sheet was filed.

3. The previous application preferred by applicant was rejected vide order dated 4th March 2020.

4. Applicant had preferred Petition for Special leave to Appeal No.51 of 2022 before the Hon'ble Supreme Court. The Petition was rejected vide order dated 20th January 2022. However, considering the fact that, Applicant has been in custody for more than four years and if there is no progress in the trial for the next six months, liberty was granted to the Applicant to move the High Court at that stage for grant of bail.

5. Learned Advocate for the Applicant submitted that, Applicant is in custody for a period of five years and three months. There is no progress in the trial. Charge is not framed. List of witnesses provided along with charge-sheet which is part of record indicate that, there are about 100 witnesses proposed to be examined by the prosecution. There are no criminal antecedents against the Applicant. Applicant is not named in the FIR. There is

no evidence to show that, the Applicant is a member of crime syndicate. Applicant was not present at the spot of incident. Applicant has not delayed the trial. Long incarceration in custody without trial affects the liberty under Article 21 of the Constitution of India.

6. Learned Advocate for the Applicant has relied upon the following decisions:-

(i) Yogesh Vinod Ahiwale Vs. The State of Maharashtra delivered in Special Leave to Appeal No.8496 of 2022 passed by Hon'ble Supreme Court, vide order dated 14th October 2022;

(ii) Mohammad Iliyas Mohammad Bilal Kapadiya Vs. State of Gujarat¹;

(iii) Indrani Pratim Mukerjea Vs. Central Bureau of Investigation & Anr.²

(iv) Vishal Madhukar Khedekar Vs. The State of Maharashtra delivered in Criminal Bail Application No.1413 of 2021 passed by this Court vide order dated 20th October 2022;

(v) Ajit Bhagwan Tiwde Vs. State of Maharashtra delivered in Criminal Bail Application No.995 of 2021 passed by this Court vide order dated 19th January 2022.

1 2022 SCC OnLine SC 713

2 2022 ALL MR (Cri) 2282 (SC)

7. Learned APP submitted that, the previous application preferred by Applicant has been rejected by this Court on merits. There is no change in circumstance. The provisions of MCOC Act are invoked in the present case. Offence is of serious nature. During the course of investigation, statement of the accused Ramesh Dhule was recorded under Section 18 of the MCOC Act. He has disclosed the involvement of the Applicant in the crime. The prosecution proposes to examine 88 witnesses. Trial may be expedited. Learned APP tendered the affidavit-in-reply opposing application for bail. The same is taken on record.

8. Applicant is in custody from 23rd October 2017. Charge is not yet framed. The prosecution proposes to examine about 88 witnesses. The next date for hearing before the Trial Court is on 14th February 2023 and the purpose indicated in the Roznama is for framing of charge. Learned advocate for the Applicant has produced the Roznama for perusal which does not indicate that the Applicant had delayed the trial.

9. In the case of *Yogesh Vinod Ahiwale Vs. The State of Maharashtra* (supra), the Apex Court has granted bail to the accused, who was prosecuted for offences under the provisions of MCOC Act. The prosecution had contended that, there are series of crimes committed by some of the members of crime syndicate. The apex

Court observed that, it is not necessary at this stage to consider the issue with regard to applicability of the MCOCA inasmuch as any observation thereon would prejudice the rights of either of the parties at the stage of trial. However, taking into consideration the fact that, the Petitioner has already been incarcerated for a period of about seven years and even the charges are not yet framed, bail can be granted. In the case of *Mohamad Iliyas Mohamad Bilal Kapadiya* (Supra), the apex Court has dealt with the prayer for bail by the Petitioner therein who was prosecuted under the provision of Gujarat Control of Terrorism and Organised Crime Act, 2015 (for short *GCTOC* Act'). It was contended on behalf of the Petitioner that, firstly, it is required to be satisfied that the activities undertaken is either singly or jointly as a member of an organized crime syndicate or on behalf of such a crime syndicate. Secondly, in respect of such an activity, more than one charge-sheet must have been filed in the preceding period of last ten years. The Apex Court observed that, only one offence registered against the Petitioner which has been committed by seven accused out of two are the members of crime syndicate. In respect of other offences, no members of the syndicate are arrayed as accused. For invoking the provisions of *GCTOC* Act, the condition will have to be fulfilled that such an activity should be prohibited by law for the time being in force. Such activity is

cognizable offence punishable with imprisonment of three years or more. Such an activity is undertaken either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate; that, in respect of such an activity more than one charge-sheet must have been filed before the competent Court and the charge-sheet must have been filed within a preceding period of ten years and that the Courts have taken cognizance of such offences. In that case only one charge has been filed in respect of activities which was undertaken by the Petitioner as a member of crime syndicate on behalf of syndicate. The Apex Court granted bail to the accused/petitioner therein. In the case of *Indrani Pratim Mukerjee* (supra), the Petitioner accused was prosecuted for offences under Section 302 of IPC. It was urged before the Apex Court that, the accused is in custody for six and half years. She would be entitled for benefit of special dispensation under Section 437 of Cr.P.C. The prosecution has cited large number of witnesses. The trial Court will not complete soon since large number of witnesses were yet to be examined. The trial Court had commenced and 68 witnesses were examined. The apex Court considered the fact that, the accused was in custody for six and half years and without commenting on merits of the case had observed that, even if 50% of the remaining witnesses would be given up by the prosecution, the trial would not

be completed soon. The accused was directed to released on bail. In Criminal Bail Application No.1413 of 2021 preferred by *Vishal Madhukar Khedekar and Sandesh @ Dadya Xaviour Holkar* (supra), this Court had granted bail to the said accused vide order dated 20th October 2022. They were prosecuted for the offences under the IPC as well as under the provisions of MCOC Act. Considering the fact that, the accused were in custody for a period of about five years and that the prosecution is relying upon several witnesses and it was not clear as to when the trial would be over, Bail was granted to the applicant/accused. In the case of *Ajit Bhagwan Tiwde* (supra), this Court has considered the prayer for bail by an accused who was prosecuted for offences under Sections 302, 307 and other connected offences and offences under the MCOC Act. The primary contention of the accused therein was that, he was in custody for long period of time and the trial was not concluded. Though the trial has commenced, there were no chances of it getting concluded soon. This Court noted the effect of long incarceration in custody and also rigours provided under Section 21(4) of the MCOC Act. Reference was made to several decisions of the Apex Court including the decision in the case of *Union of India Vs. K. A. Najeeb* (2021) 3 SCC 713; *Angela Harish Sonatakke Vs. State of Maharashtra* (2021) 3 SCC 723; *Chintan Vidyasagar Upadhyay Vs. State of Maharashtra*

passed by Apex Court in Special Leave to Appeal (Cri.) No. 2543 of 2021 vide order dated 17th September 2021 and the decision of Division Bench of this Court in the case of *Iqbal Ahmed Kabir Ahmed Vs. The State of Maharashtra* passed in Criminal Appeal No. 355 of 2021 decided on 13th August 2021. Reference was made to various other decisions of the Apex Court in support of principle of right to speedy trial. After analysis of various decisions it was observed that, incarceration in custody for long period without trial or completion of trial infringes Article 21 of the Constitution of India. Considering the observations of the Apex Court in the case of *Union of India Vs. K. A. Najeeb* (supra), this Court has dealt with the rigors under Section 21(4) of the MCOC Act and grant of bail on the ground of long incarceration in custody. It was observed that, Courts are required to perform balancing act so as to reach a golden mean in between the rights of an individual and those of society at large. The sympathy for undertrials who are in custody has to be balanced with gravity/magnitude of crime, likelihood of crime etc. The analysis may be based on facts of each case.

10. In the present case, the prosecution has proposed to examine about 88 witnesses. The applicant is in custody for more than 5 years. The trial has not commenced. There are no criminal antecedents against the applicant. He is not assailant in the crime. It

is not clear as to when the trial would commence and come to an end. Considering these aspects, case for grant of bail is made out.

ORDER

- (i) Criminal Bail Application No. 2830 of 2022 is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R. No.517 of 2016 registered with Akluj Police Station, Solapur (Rural) which is subject matter of MCOCA Special Case No. 1 of 2020 pending on the file of learned Special Judge, Malshiras District Solapur on furnishing P.R. bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- (iii) Applicant is permitted to furnish provisional cash bail in the sum of Rs.50,000/- for a period of 6 weeks in lieu of sureties.
- (iv) Applicant shall attend Malshiras Police Station once in a month on every first Saturday between 11.00 am. to 01.00 pm. till further order;
- (v) Applicant shall attend Trial Court regularly on the date of hearing of the case unless exempted by the Court for some reason.
- (vi) Applicant shall not tamper with the evidence.
- (vii) Criminal Bail Application stands disposed off.

(PRAKASH D. NAIK, J.)