

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3181 OF 2022**

Netaji @ Netabhai Sambaji Mohite ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Vivek Arote i/b Mr. Ramnik Pawar for the Applicant.
Mr. Amit Palkar, APP for the State.

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CORAM : N.R. BORKAR, J.
DATED : 13 MARCH 2023

P.C. :-

This is an application under Section 439 of Code of Criminal Procedure, 1973 (CrPC) for bail.

2. The applicant came to be arrested in Crime No. 256 of 2017 registered at Kagal police station, Kolhapur for the offences punishable under Sections 395, 364(A), 387, 346, 506(2), 120(B) of Indian Penal Code, 1860 (IPC), Sections 3(1)(ii), 3(2), 3(4) and 3(5) 4 of the Maharashtra Control of Organized Crime Act, 1999(MCOC Act) and Sections 3(1) r/w 27 of Arms Act, 1959.

3. The bail is sought on the ground of prolong incarceration as an under-trial. The learned counsel for the applicant submits that the applicant is in jail for more than five years. It is submitted that the trial is still at the stage of framing of charge. It is submitted that this Court and the

Hon'ble Supreme Court has held that prolonged incarceration without trial amounts to infringement of or violation of right of accused under Article 21 of the Constitution of India. It is, thus submitted that the applicant may be released on bail.

4. On the other hand, the learned APP for the respondent/State submits that the applicant is involved in serious crime of abduction and demand of ransom. It is submitted that applicant is member of Organized Crime Syndicate. It is submitted that considering the nature of offence, the applicant may not be released on bail.

5. In *James Jaffri Almerda @ Sam Vs. The State of Maharashtra*¹, this Court has held that the restriction under Section 21(4) of the MCOC Act would not be impediment in granting bail due to prolong incarceration of accused without trial. The applicant therein was in the custody for 6½ years and there were 13 criminal cases registered against him. In *Airl Patrl Vs. The State of Maharashtra*², this Court granted bail to the applicant therein, who was in custody for 4 & ½ years by observing that the minimum punishment prescribed for the offences alleged to have been committed by the applicant under the provisions of MCOC Act is five years. The possibility of conclusion of trial in near future appears to be remote as till date not a single witness has been examined by the prosecutor.

1 Criminal Bail Application No. 175 of 2022 dt. 15.3.2022

2 Criminal Bail Application No. 33 of 2022 dt. 29.7.2022

6. In the present case, the applicant is in jail for more than five years. The trial is still at the stage of framing of charge. Considering the overall facts and circumstances, I am inclined to release the applicant on bail. In the result, following order is passed:

- (i) Application is allowed.
- (ii) The applicant be released on bail in Crime No. 256 of 2017 registered at Kagal police station, Kolhapur for the offences punishable under Sections 395, 364(A), 387, 346, 506(2), 120(B) of Indian Penal Code, 1860 (IPC), Sections 3(1)(ii), 3(2), 3(4) and 3(5) 4 of the Maharashtra Control of Organized Crime Act, 1999(MCOC Act) and Sections 3(1) r/w 27 of Arms Act, 1959 on furnishing P.R Bond in the sum of Rs.50,000/-(Rupees Fifty Thousand) with one or two sureties in the like amount.
- (iii) The applicant shall not enter into the Corporation limits of Kolhapur City, except to attend the dates before the trial Court.
- (iv) The applicant shall furnish the address of the place where he is going to reside after his release and his mobile number, if any to the concerned police station.
- (v) The applicant shall attend the concerned police station within whose jurisdiction he is going to reside after his release once in a month, i.e. on the first Saturday between 11.00 a.m. to 2.00 p.m., till conclusion of the trial.
- (vi) The applicant shall not commit any other offence.
- (vii) The prosecution is at liberty to file an application for cancellation of bail, if the above conditions are breached.

(N.R. BORKAR, J.)