



Diksha Rane

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

BAIL APPLICATION NO.650/2023

MOHAMMAD JAMAL NADAF

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Meghdeep Oak a/w. Adv. Diptendu Bose for the
applicant.

Mr. P. H. Gaikwad, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 11, 2023.

P.C. :

1. Heard learned counsel for the applicant and learned
APP for the State.

2. This is an application for bail. The present offence for
which the applicant is arrested, is in C.R.No.116/2015 of
Sanjay Nagar Police Station, Sangli, under Sections 302,
364, 364(A), 118, 212 read with 120-B of the Indian Penal
Code (hereafter 'IPC' for short) read with Sections 3, 25 read
with 4, 25 of the Indian Arms Act read with Sections 3(1)(ii),
3(2), 3(3) and 3(4), 3(5) of the Maharashtra Control of
Organised Crime Act, 1999 (hereafter 'MCOCA', for short).

3. No doubt, the accusations against the applicant are serious. The accused is alleged to have committed murder of one of the witness in a pending case for giving deposition against the present applicant in connection with C.R.No.91/2015 registered for the offence punishable under Sections 387, 397, 364(A) of the IPC.

4. It is the submission of learned APP while vehemently opposing the application for bail that as a result of this *modus operandi* adopted by the applicant, by threatening the witnesses or eliminating them, the witnesses are not coming forward to depose against him which is resulting in his acquittal in the pending cases, some of which are very serious in nature.

5. Affidavit-in-reply has been filed by the respondent-State. Paragraph 25 is a chart which lists as many as twenty three offences registered against the applicant including the present offence. The applicant is acquitted in sixteen of the cases. It is here that learned APP emphasizes that these acquittals are on account of the witnesses turning hostile due to the fear factor of the applicant. Learned APP further submitted that so far as the present trial is concerned, it is

either at the instance of the applicant or that of the co-accused the trial is being protracted. From the materials it appears that it is not as if the applicant alone is responsible for protracting the trial. There are as many as 140 witnesses cited by the prosecution. Though the trial has commenced, not a single witness has been examined so far. The applicant was arrested on 19/12/2025 and is now in custody almost for seven years and ten months as an undertrial.

6. Though bail is sought on the ground of long incarceration, I would even then otherwise have hesitated in enlarging the applicant on bail given the threat perception to the witnesses, and in the facts and circumstances of the case. One of the factors that prevailed with me is the medical condition of the applicant.

7. Learned APP further invited my attention to the affidavit in reply, particularly ground (i) where it is stated thus:-

“(i) On 26/07/2023, applicant/accused was produced before Hon’ble Special MCOCA Court, Sangli then there was huge crowd of people in the entire court premises. A large crowd was gathered of supporters of applicant/accused and his opponents. Police inspector of Sanjay Nagar, Sangli submitted confidential report to Hon’ble court which states

that, while applicant/accused meeting the court and returning him to the jail there was minor quarrel between supporters of applicant/accused and his opponents.”

Bail is opposed on this ground.

8. A huge crowd of supporters of the applicant had gathered in the entire Court premises. There was minor quarrel between the supporters of the applicant and his opponents. In my opinion, This is not by itself a ground to deny the facility of bail to the applicant. At the same time, it cannot be said that the apprehension expressed by learned APP is without any basis. Learned counsel for the applicant, on instructions, submitted that the applicant assures that the applicant will co-operate with the investigating officer in maintaining proper law and order and is willing to abide by any conditions imposed to allay the apprehensions.

9. On one hand is the personal liberty of the applicant along with a right to a speedy trial, and on the other is the concern of law and order which though the respondents are competent to address, at the same time it is necessary to ensure that the confidence of the witnesses to depose fearlessly should not be dampened or lost because of the applicant's presence upon his enlargement on bail. The cry

of the victims for justice also cannot be lost sight of. To maintain the balance between personal liberty of the applicant and at the same time keeping in mind the interest of the victim, also to safeguard the witnesses, stringent conditions need to be imposed while enlarging the applicant on bail bearing in mind the overall nature of criminal antecedents against him. Either way 'fair trial' should not be the casualty.

10. I had called for a medical report from the Prison Hospital. The medical report is taken on record. The present health status reveals that the applicant is unable to chew and swallow solid food. There is a bad smell coming from his mouth. There are 2 to 3 clots in mandible area and septic infection in mouth. The applicant is on liquid diet since five years. He is on milk diet nowadays. The opinion of the Medical Officer is that the surgery mentioned in the report is essential for his health status and to avoid subsequent complication of non union of mandible fracture. This is one circumstance which weighed with me for the applicant's enlargement on bail.

11. The investigation is complete. The charge-sheet has

been filed. In the facts and circumstances of the present case, on the basis of the medical condition of the applicant and in view of the long incarceration of the applicant, as an undertrial, I am inclined to enlarge the applicant on bail by imposing stringent conditions. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Mohammad Jamal Nadaf in connection with C.R.No.116/2015 of Sanjay Nagar Police Station, Sangli, shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more local sureties in the like amount.
- (c) Learned counsel for the applicant, on instructions, made a statement that the applicant will reside outside the State of Maharashtra and State of Karnataka, till conclusion of the trial. Statement is accepted.
- (d) Except for attending the trial and for attending the other Court proceedings which the applicant shall duly intimate to the concerned investigating officers, before entering the State of Maharashtra and Sangli District, the applicant shall not enter the State of Maharashtra and the State of Karnataka after being released on bail, till this trial concludes.

(e) The applicant to intimate to the trial Court and the investigating officer his travel plans at least three days in advance before attending the Court proceedings so as to enable the investigating officer to address the issue so far as the security angle is concerned. The applicant shall forthwith leave the State of Maharashtra after the hearing of the case is over.

(f) The applicant shall report to the nearest police station close to his residence while residing outside the State of Maharashtra and Karnataka, once in 15 days on every first and third Sunday between 11.00 a.m. and 1.00 p.m. till conclusion of the trial.

(g) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(h) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change. Such undertaking be filed by the applicant before the trial Court upon his released.

(i) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(j) The applicant shall surrender his/her passport, if any, to the investigating officer.

(k) Liberty to the prosecution to move an appropriate application for cancellation of bail, if there is any violation of the conditions imposed. Such application shall be given a priority hearing.

12. The application is disposed of.

(M. S. KARNIK, J.)