



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

BAIL APPLICATION NO. 707 OF 2023

ABDUL RAHIM ABDUL RAHIMAN

BIHARI @ DHAD

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Roohita Shaikh i/b Adv. Javed Shaikh a/w Adv. Anil Nile
a/w Adv. V.V. Bambarde for the Applicant.

Ms. Veera Shinde, APP for the State.

ACP Vilas Shinde, Kalwa Division, Thane.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 21, 2023

P.C. :

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

2. This is an application for bail in respect of the offence
punishable under Sections 394, 395, 396, 302, 120-B read
with 34 of the Indian Penal Code (hereafter 'IPC' for short)
and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra
Control of Organised Crime Act, 1999 registered on
19/07/2016 vide C.R. No.183 of 2016 with Shil Daighar
Police Station.

3. Learned APP opposed the application.

4. The applicant is accused No.6. The applicant was

arrested on 24/07/2016. My attention is invited by the learned APP to the order dated 12/02/2019 passed by the trial Court rejecting the application for bail of the applicant. It is submitted that the offence is serious in nature and that the trial has already commenced.

5. In so far as present C.R. is concerned, it is the prosecution's case that there were 3 accused riding on the same bike and the applicant was one of them. The prosecution alleges that the gang leader - accused No.1 instructed the applicant and other co-accused to snatch a gold chain from the person who was passing by. In the scuffle that followed, it is alleged that the applicant pushed the victim. The main assailant is accused No.3.

6. The applicant was arrested and is now in custody for 7 years and 1 month awaiting trial. Though the trial has commenced and 5 witnesses have been examined, there are as many as 49 more witnesses the prosecution proposes to examine. Learned counsel for the applicant submitted that the last witness i.e. witness No.5 was examined as far back on 23/03/2021 and since then there

has been no progress in the trial. Looking at the number of witnesses, the trial is likely to take a long time to conclude.

7. My attention is invited to the commonality of the offences registered against the present applicant with the other gang members which is indicated in the chart at page No.393 of the paperbook. The applicant has 4 criminal antecedents registered against him. There are 2 offences in which there is a commonality between the gang leader and the present applicant of which one offence is of the year 2013 registered vide C.R. No. 217 of 2013 under Sections 326 and 324 of the IPC and another offence is of the year 2016 registered vide C.R. No. 42 of 2016 under Sections 323, 506(2) and 34 of the IPC.

8. There are 2 offences of the year 2012 and 2013 registered vide C.R. No. 471 of 2012 under Sections 454, 457 and 380 of the IPC and C.R. No. 245 of 2013 under Sections 380 and 34 of the IPC against the applicant which are individual offences and have no commonality with any of the members of the gang.

9. The gang leader has been enlarged on bail in the

present offence. The investigation is complete and the charge-sheet has been filed. Considering the role attributed to the present applicant in the present offence and as he is incarcerated for more than 7 years and 1 month as an undertrial and also having regard to the nature of the antecedents against the applicant, I am inclined to enlarge the applicant on bail, primarily on the ground of long incarceration and having regard to the role attributed the applicant in the present C.R.

10. Learned APP apart from opposing the application submits that if this Court is inclined to enlarge the applicant on bail, looking at the history of the offences registered against the applicant, stringent conditions may be imposed.

11. Learned counsel for the applicant, on instructions, submits that if granted bail, the application is willing to reside outside Thane District till the trial concludes. In my opinion, this condition is necessary as the witnesses residing within the jurisdiction of the Thane District are bound to feel threatened. Hence, the following order:-

ORDER

- (a) The application is allowed.
- (b) The applicant – Abdul Rahim Abdul Rahiman Bihari @ Dhad in connection with C.R. No. 183 of 2016 registered with Shil Daighar Police Station 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) The applicant shall attend the Investigating Officer of Shil Daighar police station once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m.
- (d) 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.
- (e) 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.
- (f) Except for attending the trial and for the purpose of reporting to the Investigating Officer, the applicant shall not enter Thane District after being released on bail, till the trial concludes.
- (g) If there is an attempt to threaten the witnesses or

tampering with evidence on the part of the applicant, the prosecution is at liberty to file an application for cancellation of bail.

12. The application is disposed of.

(M. S. KARNIK, J.)