



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

BAIL APPLICATION NO. 711 OF 2023

FIZA SARFARAZ SAYYED @ JAFFREY	..APPLICANT
VS.	
THE STATE OF MAHARASHTRA	..RESPONDENT

Ms. Roohita Shaikh i/b Mr. Javed Shaikh and Mr. Anil Nile, for
the Applicant.

Ms. Rutuja Ambekar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 30, 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 offences punishable under sections 392, 411, 414 read with 34 of the Indian Penal Code, 1860 and under sections 3(1)(ii), 3(2), 3(4) and 3(5) of the Maharashtra Control of Organised Crime Act, 1999 (hereafter 'MCOCA', for short) registered on 19/04/2018 vide C.R. No.212 of 2018 with Manpada police station, Thane.
- 3.** The applicant was arrested on 03/09/2019. The applicant is the accused no.4. The accused no.2 who was actively involved in the offence of chain snatching and also

the part of the gang of which the accused no.1 is a gang leader, has been enlarged on bail. So far as the co-accused Faizal Afzal Shaikh who has been enlarged on bail is concerned, learned trial Court while enlarging the said co-accused on bail has observed thus:

“3] F.I.R. dated 19/4/2018 is filed by Suvarna Mohan Thorat resident of Dombivli. It is alleged that on 18/4/2018 at about 10:00 p.m. when she was proceeding from the road in front of Hira Kirana stores Dombivli, present accused and co-accused alongwith juvenile offender came on two motor cycles. Co-accused Shabbir, juvenile offender Abdulla came on motor-cycle and kept vigil eye while present accused Faizal and co-accused On Sarfaraj Sayyad came on another motor cycle. It is alleged that present accused yanked off gold mangalsutra weighing 4 tolas from her neck and fled on motor- cycle towards Gharda circle.

4] It seems that present accused was arrested on 29/8/2018. Other accused were also arrested who are members of organized crime syndicate. It seems that accused have committed similar type of offences in Thane District, therefore, the provisions of the MCOC Act were invoked.

5] According to learned Advocate for the accused his earlier bail application was rejected on 28/7/2020. The mother of fiancée of accused namely Najma filed writ petitions before the Hon'ble Bombay High Court against police, therefore, he has been falsely implicated. The accused is behind bars from more than 5 years. There is no substantial progress in the trial. Even charge is not framed. The maximum punishment prescribed for the offence punishable under section 392 of IPC is imprisonment for 10 years, therefore, prayed for bail.

6] The prosecution has opposed the application, contending that the accused has been identified in the test identification parade. There is strong evidence against him. He is involved in number of similar type of offences. In case of grant of bail, there is possibility of repetition of similar type of offence.

7] I have considered rival submissions.

8] The record shows that the accused is behind bars since 29/8/2018. Charge has not been framed. There is involvement of five accused in this case. The learned Advocate for the accused relied upon a case Ranjit Laxman Tanpure V/s. Intelligence Officer and Anr.: Bail Application No. 3062/2021 order dated 6/12/2022 wherein the accused was facing prosecution in respect of offences punishable under the provisions of NDPS Act, was granted bail on the ground of his long incarceration.

9] The Hon'ble Supreme court in a case of Union of India V/s K.A.Najeeb: Criminal Appeal No.98/2021 has observed that the constitutional Courts can grant bail on the ground of long incarceration because it amounts to violation of Part-III of the Constitution. It is observed that specific bar under Special Enactment such as Unlawful Activities Prevention Act would not come in the way for denying the bail for breach of Constitutional right of speedy trial.

10] It may be noted that the Hon'ble Bombay High Court in a case of Anil Shankar Patil V/s The State of Maharashtra: Bail Application No.33 of 2022 dated 29/7/2022 has granted bail to the accused who was also facing prosecution for the offence under section 387, 504, 506(2) r/w 34 of IPC, Section 7 of the Criminal Law Amendment Act as well as 3(1)(ii), 3(2), 3(4) of the MCOC Act.

11] Hon'ble Bombay High Court in a case Ajit Bhagwan Tiwde V/s State of Maharashtra: 2022 SCC OnLine Bom 4079 has granted bail to accused who was facing prosecution in connection with offence of murder as well as offence punishable

under the provisions of the MCOC Act. The Court has taken note of long incarceration of accused. It is observed that bar under section 21(4) of the MCOC Act will not be applicable.

12] In view of law laid down above by the Hon'ble Supreme Court in K.A.Najeeb's case (Supra) and of Hon'ble Bombay High Court in above referred cases and taking note of the facts and circumstances of the present case, it is necessary to grant bail to the accused.

13] It is true that accused has criminal antecedents. Learned Advocate for the accused submitted that he is ready to abide any conditions imposed by this Court. Taking note of his antecedents, in order to have check on his activities, he can be directed to attend the police station periodically till conclusion of trial."

4. The applicant is a woman. Learned APP while opposing the application for bail invited my attention to the detailed affidavit-in-reply filed by the respondent. It is further submitted that the applicant is the one who received the stolen property and responsible for disposing the stolen property. It is further submitted that there are 14 criminal antecedents reported against the applicant with the same police station. Learned APP submitted that even the applicant's son is an accused in the present offence. It is further submitted that the applicant should not be enlarged on bail as the applicant's son who was actively involved in the commission of offence is absconding.

5. Considering that the applicant is in custody for more than 4 years and 3 months and that she is a woman and that the co-accused who was actively involved in the commission of offence has been enlarged on bail and further that even the charge has not been framed by the trial Court, I am inclined to enlarge the applicant on bail by imposing stringent conditions. In my opinion, the applicant shall not be deprived the facility of bail only on the ground that there are criminal antecedents reported against her. The apprehension expressed by learned APP can be taken care of by imposing stringent conditions while enlarging the applicant on bail. The investigation is complete. The charge-sheet has been filed. Hence, the following order :-

ORDER

- (a) The application is allowed.

- (b) The applicant- Fiza Sarfaraz Sayyed @ Jaffrey in connection with C.R. No. 212 of 2018 registered with Manpada police station shall be released on bail on her furnishing P.R. Bond of Rs.1,00,000/- with one or more sureties in the like amount.

- (c) The applicant is permitted to furnish cash bail surety in the sum of Rs. 1,00,000/- for a period of 6 weeks in lieu of

surety.

(d) The applicant shall attend the investigating officer of Manpada police station once in a month on every first Tuesday of the month between 11.00 a.m. and 1.00 p.m.

(e) 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.

(f) On being released on bail, the applicant shall furnish her contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(g) Except for attending the trial and for the purpose of reporting to the investigating officer, the applicant shall not enter the area of Kalyan Taluka after being released on bail, till the trial concludes.

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

6. The application is disposed of.

(M. S. KARNIK, J.)