

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

CRIMINAL BAIL APPLICATION NO. 1375 OF 2021

Raisab Achhelal Yadav

..Applicant

Versus

The State of Maharashtra

..Respondent

Mr. S. C. Kanojia for Applicant.

Ms. Pallavi Dabholkar, A.P.P. for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 11 APRIL 2023

PC :

1. This is a second bail application preferred by the same applicant. The applicant is seeking his release on bail in connection with C.R.No.25 of 2017 registered at Rajgad police station, Pune, under sections 395, 397, 342, 412 and 201 of the I.P.C., under sections 4 and 25 of the Indian Arms Act and under sections 3(1) (ii), 3(4) of The Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as 'M.C.O.C. Act'). The Charge-sheet is filed and the case is pending before the Special Court, Pune, vide Special Case (M.C.O.C.) No.19 of 2017.

2. On the previous occasion, this Court had passed an order

on 09/10/2019 in Criminal Bail Application No.910 of 2019. The said application was allowed to be withdrawn and was disposed of as such. After passing of that order on 09/10/2019, this application is filed because the trial has not even commenced. The Applicant was arrested on 13/03/2017 and since then he is continuously in custody. Considering this delay in the trial, I had asked learned Trial Judge to submit a report regarding progress of the trial. Learned Trial Judge has sent a report dated 20/03/2023 in which various reasons are given as to why the Trial has not progressed further even to the stage of framing of charges. Learned Trial Judge has mentioned that the Advocates have not appeared and have not argued on the charge. One of the accused i.e. Accused No.11 is absconding and N.B.W. is pending against him. The accused have engaged different advocates and they have sought adjournments from time to time. The advocates have remained absent and, therefore, there is no progress in the trial at all. The prosecution intends to examine many witnesses. A pursis filed by learned Special P.P. disclosed that there are 30 witnesses. Learned Trial Judge has mentioned that, at least, 9 to 10 months

would be required to conclude the trial.

3. In view of this delayed trial, I have again examined the material against the applicant with the assistance of learned counsel for the applicant, as well as, learned APP. The record shows that the investigating agency has filed an affidavit pointing out the material against the applicant. This application needs to be decided afresh taking into account the fact that the applicant is in custody since 13/03/2017 and there is absolutely no progress in the trial. In any case, it is likely to take a very long time.

4. The incident in question has occurred in the night between 02/03/2017 and 03/03/2017. The F.I.R. is lodged by one Raghunath Mali who was a Watchman in a company at village Ranje, Taluka Bhore, District Pune. The company was manufacturing transformers. In the night, when the incident had occurred, 10 to 12 persons came near him holding wooden sticks and swords. They assaulted four workers sleeping in a shed. They tied hands and legs of the first informant and other workers. They brought a vehicle inside the compound. The informant realized

that they had left the place at around 4.30a.m. After that the informant and others helped each other in getting themselves free. According to the first informant, the offenders were in the age group of 25 to 30 years and they were slim. Besides this, there was no description. The offenders took away the property worth more than Rs.23 lakhs consisting of copper wires, copper strips, aluminum wires etc. On this basis the F.I.R. was lodged at Rajgad police station, as mentioned earlier. During investigation, the applicant was arrested on 13/03/2017. The provisions of M.C.O.C. Act were applied.

5. Learned counsel for the applicant submitted that, there is hardly any material against the present applicant. There is no recovery at his instance. He is not identified by the material witnesses. He does not have criminal antecedents. He is in custody for a long time. Therefore, the applicant deserves to be released on bail.

6. Learned APP relied on the submissions made in the affidavit filed by the investigating agency and relied on the specific

material which is annexed to the said affidavit.

7. I have considered these submissions and I have perused the material annexed to the affidavit. The affidavit mentions that, there were eye witnesses namely Ram Krupal Prasad, Mohd. Alim Zahid Ali, Rashid Ali and Zahid Ali Illu. Their statements are recorded. Their statements are similar in nature to that of the first informant. There is a statement of one Sanjay Bhanushali recorded on 16/03/2017. According to him, on 03/03/2017, at about 1.30p.m. one tempo was brought to his agricultural field and the property brought through that tempo was unloaded in his agricultural field. This witness was important because, according to the prosecution case, the tempo was driven by the present applicant.

8. The test identification parade was held on 03/08/2017. In that parade, Sanjay Bhanushali did not identify the present applicant. Though, Affidavit of the investigating agency mentions that, even Sanjay Bhanushali identified the applicant, however, the parade memo annexed to the affidavit points to the contrary. The test

identification parade memo does show that the first informant had identified the present applicant, but the F.I.R. indicates that there was darkness. He could not be in a position to see the culprits. The incident had taken place late in the night. There were 10 to 12 persons and only vague description is mentioned in the F.I.R. Apart from this circumstance, there is hardly anything against the present applicant. Though the prosecution case is that the C.D.R. of the applicant was taken to show that the applicant was in touch with the others, that by itself does not indicate that the applicant had taken part in the actual commission of offence. The affidavit in reply specifically mentions that, except the present case there is no other criminal antecedents against the present applicant. There is no recovery at his instance. Though the affidavit mentions that there are six offences against the gang leader Kapildev Dubey, at this stage, there is a scope to believe that the applicant may not have committed an offence attracting the provisions of M.C.O.C. Act because, the evidence against him is weak. Considering this situation and also taking into account the fact that the applicant is in custody since 13/03/2017 and the trial is not likely

to conclude in near future, the applicant deserves to be released on bail.

9. Hence, the following order:

O R D E R

i) In connection with C.R.No.25 of 2017 registered at Rajgad police station, Pune, the applicant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

ii) The Application is disposed of.

(SARANG V. KOTWAL, J.)