

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

BAIL APPLICATION NO. 1471 OF 2022

Sherabi Yusuf Sayyed

..Applicant

VS.

The State of Maharashtra and anr.

..Respondents

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

Mr. S. V. Gavand, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 8, 2023

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP for the State.
- 2.** This is an application for bail by the applicant- Sherabi Yusuf Sayyed, in connection with C.R. No.22 of 2015 dated 04/02/2015 vide MCOC Special Case no. 8 of 2015, registered with Dombivali Police Station, under sections 394 and 34 of the Indian Penal Code, 1860 and sections 3(i)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999.
- 3.** The applicant is a woman who is alleged to be the gang leader. On record is placed a chart by the learned APP

indicating the commonality of the offences committed by the applicant along with other members of the organised crime syndicate. So far as the applicant is concerned, there are as many as 12 offences registered against her of a serious nature. All the offences registered against the applicant and the members of her gang pertain to chain-snatching incidents.

4. I am making it clear that I am inclined to consider the application of bail only on the ground of long incarceration considering the fact that the applicant is a woman suffering from medical ailments and that she is now 72 years of age.

5. So far as the medical condition of the applicant is concerned, the same is reflected in the order dated 19/09/2022 passed by this Court which reads thus:

“1 The learned APP has placed on record the report of the Medical Officer, Kalyan District Prison dated 16/9/2022. In the report, it is stated that the applicant is diagnosed as the case of Ischimic heart disease and advised Coronary Angiography. She is admitted in the Sir J.J. Hospital, Mumbai for treatment. The said statement is accepted.

Since the medical ailment of the applicant is being taken care of, in one of the best hospitals in the City, no orders are necessary.

2 Since the offence invoked is under the MCOC Act, let the learned APP file an affidavit within a period of four weeks from today.

3 List on 17/10/2022.”

The medical report dated 20/01/2022 issued by Medical Officer, Kalyan District Prison Class-I, Kalyan is on page no. 79 of the paperbook.

6. The applicant was arrested on 27/10/2015 and in custody for more than 7 years and 3 months. The trial has commenced and as many as 10 witnesses have been examined. The prosecution propose to examine around 80 witnesses. Learned APP submits that though there are 80 witnesses, it is not that each and every witness is proposed to be examined by the prosecution.

7. Be that as it may, the situation as it stands, it is obvious that the trial is not likely to conclude any time soon. Learned counsel for the applicant relied upon the order dated 19/01/2022 passed by this Court in the case of **Ajit Bhagwan Tiwde Vs. State of Maharashtra**¹ in support of her contention. Paragraph Nos. 30 and 31 of the said order read thus:

“30. In the case of Supreme Court Legal Aid Committee (supra), the Court had directed proviso for grant of bail that benefit of direction in clause (ii)

1 Bail Application No. 995 of 2021

and (iii) shall not be available to those persons who are in the opinion of the Trial Court for the reasons to be stated in writing likely to tamper with evidence or influence the prosecution witnesses. In the case of Shaheen Welfare Association (supra), it was cautioned that bail can be granted unless Court comes to conclusion that their antecedents are such that releasing them may be harmful to the lives of complainant, family members of complainant or witnesses. In the case of Hussainara Khatoon, it was observed that sympathy for undertrials who are in jail for long terms on account of pendency of cases, has to be balanced having regard to impact of crime. The Division Bench of this Court, in the case of NIA Vs. Areeb Majeed has observed that in cases under Special Acts, parameters for grant of bail are more stringent and they remain in custody. The courts are required to perform balancing act, so as to reach a golden mean in between the rights of an individual and those of society at large. The court has to look into those aspects while granting bail even on the ground that the undertrial is in prolonged custody.

31. In the light of observations of Supreme Court and this Court as stated above, the Court has to perform balancing act. The sympathy for undertrials who are in custody has to be balanced with gravity/magnitude of crime, likelihood of threat to witnesses. The analysis may be based on facts of each case."

8. Considering the number of offences registered against the applicant, learned counsel for the applicant makes a statement that to show her bonafide, the applicant shall reside outside the jurisdiction of the Mumbai, Mumbai Suburban and Thane districts. The Statement is accepted. The applicant is a woman aged about 72 years and is in custody for more than 7 years and 3 months, having regard

to her medical condition and mainly on the ground of long incarceration, the applicant, in my opinion, deserves to be released on bail. Hence, the following order.

ORDER

(a) Applicant- Sherabi Yusuf Sayyed, in connection with C.R. No.22 of 2015 vide MCOC Special Case no. 8 of 2015, registered with Dombivali Police Station, shall be released on bail, on his furnishing P.R. Bond of Rs.50,000/- with one or more sureties in the like amount;

(b) The applicant is permitted to furnish temporary cash bail surety in the sum of Rs.50,000/- for a period of 6 weeks in lieu of surety;

(c) The applicant shall regularly attend the trial Court on the dates fixed by the trial Court;

(d) The applicant shall not enter the Mumbai, Mumbai Suburban and Thane districts except for the purpose of attending trial Court;

(e) While staying outside Mumbai, Mumbai Suburban and Thane districts the applicant shall report once a week to the nearest police station, close to her residence, every Saturday between 10.00 am and 11.00 am;

(f) The applicant shall furnish details of her

residential address while staying outside Mumbai, Mumbai Suburban and Thane districts to the trial Court as well as to the Investigating Officer;

(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.

9. The application is disposed of.

(M. S. KARNIK, J.)