



Diksha Rane

925. BA 1220-23.doc

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

BAIL APPLICATION NO.1220/2023

ROHAN FELIX D'COSTA

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Milan Desai for the applicant.

Ms. Rutuja Ambekar, APP for the State.

HC 3896 – M. B. Mali, Crime Thane City.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 12, 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 307, 120-B, 452, 387, 506(2), 427 read with 34 of the Indian Penal Code (hereafter 'IPC' for short) read with Sections 3, 25 (1b)(a), 27(2) of the Indian Arms Act read with 37(1), 135 of the Maharashtra Police Act read with 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereafter 'MCOC Act' for short) registered on 11/7/2026 vide C.R. No.I-316/2016 with Thane Central Police Station.

3. There are in all twelve accused. The applicant is the accused no.10. For ease of reference I may refer to the order dated 27/3/2023 passed in respect of co-accused Eklakh Rahim Shaikh @ Peti (accused no.11) in Criminal Bail Application No.3792/2022. I may reproduce paragraphs 1 and 2 of the said order which reads thus:-

“1. The Applicant is seeking bail in CR No. I-316/2016 registered with Thane Central Police Station for the offences punishable under Sections 307, 387, 427, 452, 506 (II), 120 B r/w 34 of IPC.

2. The case of the prosecution is that the complainant is working with Heaven Construction and Developer, Ulhasnagar, District-Thane. On 11th July, 2016 at about 11:00 a.m., he opened the office. His employer had been to Mumbai for work. The other staff members were present in the office. The son of the employer was in the office. At about 3:15 p.m., one unknown person entered in the office. He was wearing helmet and windcheater. He inquired about the whereabouts of the boss. He removed pistol tried to fire towards the complainant. However, there was no firing. The complainant tried to overpower the assailant. The helmet of the assailant fell down. Another person entered in the office. He was carrying pistol in his hand. It was pointed out at the complainant. While the complainant tried to push the assailant, he was assaulted with butt of the pistol on his head. The complainant pushed the accused and ran inside the office of his boss to save his life. The second person opened fire towards complainant and fired on the glass of his door. The Complainant did not sustain any firearm injury.

It was alleged that gangster Suresh Pujari was calling his boss and his son for extortion of money and demanded ransom from his boss, and, threatened to kill them if the amount is not given to him. Complaint was lodged with the Central Police Station, District-Thane, hence Suresh Pujari had sent goons who had assaulted the complainant and others. The assailants left the office. From the CCTV footage it is revealed that they fled on motorcycle. Subsequently the complainant learn that his colleague Sagar Tambe was also threatened by pistol. One of the assailants handed over one envelope to Sagar Tambe. It was containing a white paper on which number of Suresh Pujari was written. First Information Report (FIR , for short) was registered." Subsequently, provisions of Section 3(1)(ii), 3(2), 3(4) of MCOC Act were invoked."

4. The applicant was arrested on 5/10/2016. The applicant is in custody for more than seven years.

5. Learned APP while opposing the application for bail submitted that though the bail is on the ground of long incarceration, the trial has commenced. It is submitted that long incarceration by itself cannot be a ground for enlargement of the applicant on bail as this circumstance along with other relevant factors have to be taken into consideration before the applicant could be enlarged on bail. Learned APP relied upon the decision of the Hon'ble Supreme Court in the case of **Kalyan Chandra Sarkar vs.**

Rajesh Ranjan alias Pappu Yadav and another¹ in support of her submissions. It is submitted that the offence is serious and there are several criminal antecedents reported against the present applicant. It is further submitted that the trial has commenced and eleven witnesses have been examined so far. According to learned APP, around twenty more witnesses are to be examined by the prosecution. Therefore, this is not a fit case where the applicant can be enlarged on bail on the ground of long incarceration. Learned APP also invited my attention to the affidavit-in-reply.

6. I have gone through the order dated 27/3/2023 passed by this Court in the case of co-accused Eklakh Shaikh. The observation made therein squarely apply to the present applicant as well. The co-accused Eklakh Shaikh was enlarged on bail on the ground of long incarceration. In fact, the criminal antecedents of the co-accused Eklakh are much more serious than that of the present applicant. The trial though has commenced, is likely to take some time to conclude as twenty more witnesses are to be examined. The applicant has a claim for parity with the co-accused having

¹ (2004) 7 SCC 528

a similar role is enlarged on bail and hence the decision in **Rajesh Ranjan alias Pappu Yadav and another** (supra) is distinguishable on facts. The applicant can be enlarged on bail by imposing stringent conditions. There is nothing on record to indicate that the applicant will evade facing trial as in any case I propose to impose stringent conditions.

7. Learned counsel for the applicant, on instructions, submitted that during the pendency of the trial, the applicant will not enter the area of Thane District and shall restrict himself to Satara District. Statement is accepted.

8. The investigation is complete. The charge-sheet has been filed. The applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Rohan Felix D'costa in connection with C.R. No.I-316/2016 registered with Thane Central 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 Thane Central police station twice a month i.e. on 1st and 3rd

Wednesday of every month between 11.00 am and 1.00 pm., commencing November, 2023.

(d) During the pendency of the trial, the applicant shall reside in Satara District. 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.

(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) Except for attending the trial and for the purpose of reporting to the Investigating Officer, the applicant shall not enter the Thane District after being released on bail, till the trial concludes.

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

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

9. The application is disposed of.

(M. S. KARNIK, J.)