

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

**BAIL APPLICATION NO.2196 OF 2022**

Suresh Muttiah Poojari @ Suresh Anna ..Applicant

VS.

The State of Maharashtra ..Respondent

Adv. Deepak Gautam a/w Adv. Nandini Vasaikar for the  
Applicant.

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

**CORAM : M. S. KARNIK, J.**

**DATE : FEBRUARY 28, 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- Suresh  
Muttiah Poojari @ Suresh Anna in connection with C.R.  
No.349 of 2016 (D.C.B. C.I.D. Anti-Extortion Cell, Mumbai  
C.R. No. 3 of 2017) dated 22/10/2016, registered with Vile  
Parle Police Station, under sections 307, 506(2), 34 and 120-  
B of the Indian Penal Code, 1860 ("IPC" for short) read with  
sections 3, 25 and 27 of the Arms Act and section 3(1)(ii),  
3(2) and 3(4) of the Maharashtra Control of Organised Crime  
Act, 1999 ("MCOC Act" for short).

**3.** The date of the incident is 22/10/2016. The applicant was arrested on 05/02/2017. The applicant is now in custody for a period of more than 6 years. There are in all 10 accused. The gang leader is Mr. Ravi Pujari. The role of the applicant is that he is one of the conspirators. It is alleged that on the day of the incident, the accused no. 4 entered the hotel Gajali Hotel and asked the informant who was at the counter to call up the gang leader. The accused no. 5 was armed with a firearm and fired a shot in the air to frighten the informant. The applicant who is the accused no. 1 is alleged to be the co-conspirator. It is alleged that he was the one who supplied a sim card to the accused no. 4 and held a meeting along with other co-accused in the execution of the plan.

**4.** The applicant, as indicated earlier, is in custody for more than 6 years. My attention is invited to the order dated 13/10/2022 passed by this Court (Coram: Bharati Dangre, J.) in Bail Application No. 2388 of 2022 and other connected matters. Relying upon the authoritative pronouncement of the Apex Court in the case of **Union of India Vs. K.A. Najeer**<sup>1</sup> as well as the Division Bench

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<sup>1</sup> (2021) 3 SCC 713

decision dated 23/02/2021 passed by this Court in the case of **National Investigation Agency Vs. Areeb Ejaz Majeed<sup>2</sup>**, in paragraph no. 5 it is observed thus:

“5] After carefully perusing observations of the Hon’ble Apex Court in the case of Union of India vs. K.A. Najeeb, where the Apex Court reiterated the right of fair and speedy trial to be integral part of Article 21 and while dealing with the special statute like TADA, NDPS and in the said case, UAPA, it was clearly recorded that presence of statutory restrictions as contained in special statute per se do not oust the ability of constitutional Courts to grant bail on the ground of violation of Part III of the Constitution. It was specifically recorded that restrictions under a statute as well as the powers exercisable under constitutional jurisdiction has to be harmonised.

After making reference to the distinct pronouncement by this Court, both, the Division Bench and the Single Bench, learned Judge recorded as under :

“8 In the present case, as noted above the Applicant has been arrested on 31st January, 2018. The prosecution framed charge against the Applicant on 4<sup>th</sup> January, 2022 i.e. approximately after 4 years of his arrest and till date not a single witness has been examined by it. Applicant is behind bars without trial for about 4½ years. There are 65 witnesses mentioned in the list of witnesses annexed to the charge-sheet. Though the learned Special PP submitted across the bar that the prosecution may consider to examine 30 to 35 witnesses in totality in support of its case, perusal of Affidavit-in-reply filed by Shri. Savlaram Aagwane dated 20th July, 2022 is silent on that aspect. The minimum punishment prescribed for the offences alleged to have been committed by the Applicant under the provisions of MCOC Act is 5 years. The possibility of conclusion of trial of the

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2 Criminal Appeal no. 389 of 2020

present case in near future appears to be remote. Taking into consideration the fact that, Applicant is in custody for more than 4½ years for an offence which is punishable with minimum 5 years of imprisonment and after applying the aforementioned principles of law, the Applicant can be enlarged on bail.”

In the wake of above observations, the accused Anil Patil was released on bail.”

**5.** Even in paragraph no. 9 Her Ladyship observed thus:

“9] Since the settled position of law is to the effect, that incarceration in custody for longer period pending conclusion of trial is clearly violative of right granted under Article 21 of the Constitution which has been construed to include right to fair as well as speedy trial, I deem it appropriate to release the Applicant on bail.

I must make it clear that I had chosen to secure their liberty not on examining merits of the matter, but on the ground of prolong incarceration, with the trial likely to take considerable time for its culmination.”

**6.** My attention is also invited to the order dated 31/01/2023 passed by this Court (Coram: Prakash D. Naik, J.) in **Sachin Damodar Ekhatpure Vs. The State of Maharashtra**<sup>3</sup>. The relevant portion of paragraph no. 9 reads thus:

“In the case of Ajit Bhagwan Tiwde (supra), this Court has considered the prayer for bail by an accused who was prosecuted for offences under Sections 302, 307 and other connected offences and offences under the MCOC Act. The primary contention of the accused therein was that, he was in custody for long period of time and the trial was not concluded. Though the trial has commenced, there were no chances of it getting

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concluded soon. This Court noted the effect of long incarceration in custody and also rigours provided under Section 21(4) of the MCOC Act. Reference was made to several decisions of the Apex Court including the decision in the case of Union of India Vs. K. A. Najeeb (2021) 3 SCC 713; Angela Harish Sonatakke Vs. State of Maharashtra (2021) 3 SCC 723; Chintan Vidyasagar Upadhyay Vs. State of Maharashtra passed by Apex Court in Special Leave to Appeal (Cri.) No. 2543 of 2021 vide order dated 17th September 2021 and the decision of Division Bench of this Court in the case of Iqbal Ahmed Kabir Ahmed Vs. The State of Maharashtra passed in Criminal Appeal No. 355 of 2021 decided on 13th August 2021. Reference was made to various other decisions of the Apex Court in support of principle of right to speedy trial. After analysis of various decisions it was observed that, incarceration in custody for long period without trial or completion of trial infringes Article 21 of the Constitution of India. Considering the observations of the Apex Court in the case of Union of India Vs. K. A. Najeeb (supra), this Court has dealt with the rigors under Section 21(4) of the MCOC Act and grant of bail on the ground of long incarceration in custody. It was observed that, 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 sympathy for undertrials who are in custody has to be balanced with gravity/magnitude of crime, likelihood of crime etc. The analysis may be based on facts of each case."

**7.** In the present case, the prosecution has proposed to examine 100 witnesses. Learned APP states that not all the witnesses will be examined. Nonetheless, it is apparent that a large number of witnesses will have to be examined. The applicant is in custody for more than 6 years. The charge has been framed on 30/09/2019 pursuant to which not a

single witness has been examined. It is not as if the applicant is responsible for protracting the trial. There are criminal antecedents reported against the applicant. The C.Rs. were registered in 1983 and 1991 under section 302 of IPC and gold smuggling case. The applicant is acquitted in both cases. In respect of the C.R. which was registered in 2003 under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985, the applicant was convicted for 10 years. He has undergone the conviction. The C.R. No. 06 of 2017 was registered for the offence punishable under sections 307, 120-B of IPC read with 25 of the Arms Act which is pending trial.

**8.** In the context of MCOC Act, one aspect that needs to be considered is that prior to the registration of the present offence, there was no commonality of the applicant committing any offence with the gang leader. The offence of the year 2017 which is in common with the gang leader committed after the registration of the present offence. Another factor which is required to be taken into consideration is that as far as the present offence is concerned, there is no direct role alleged against the

applicant. The role is that of a co-conspirator. Therefore, in my opinion, the criminal antecedents should not be an impediment in granting him bail.

**9.** The criminal antecedents reported against the applicant is surely a matter of concern. Learned counsel for the applicant states that if the applicant is released on bail, the applicant will stay in Pune district and shall not enter Mumbai and Thane district. The statement is accepted.

**10.** The investigation is complete and the charge-sheet has been filed. Looking at the nature of the accusations and the possibility of the trial concluding any time soon appearing remote, in my opinion, by imposing stringent conditions the applicant can be released on bail. Hence, the following order.

### **ORDER**

**(a)** Applicant- Suresh Muttiah Poojari @ Suresh Anna in connection with C.R. No.349 of 2016 (D.C.B. C.I.D. Anti-Extortion Cell, Mumbai C.R. No. 3 of 2017), registered with Vile Parle Police Station, shall be released on bail, on his furnishing P.R. Bond of Rs.1,00,000/- with one or more sureties in the like amount;

**(b)** On being released on bail, the applicant

shall not enter Mumbai/Mumbai Suburban district and Thane district, except for the purpose of attending trial and reporting to the Investigating Officer;

**(c)** The applicant shall report to the D.C.B. C.I.D. Anti-Extortion Cell, Mumbai, once a month i.e. on first Monday between 11.00 a.m. and 1.00 p.m.

**(d)** The applicant shall furnish his contact details and residential address to the D.C.B. C.I.D. Anti-Extortion Cell, Mumbai while residing outside Mumbai/Mumbai Suburban district and Thane district and shall keep them updated, in case there is any change;

**(e)** The applicant shall report to the Alandi police station, Pune, once in a week i.e. on every Saturday between 11.00 a.m. and 01.00 p.m.;

**(f)** 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.

**11.** The application is disposed of.

**(M. S. KARNIK, J.)**