

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

BAIL APPLICATION NO.2416 OF 2022

Dinesh Narayan Rai

..Applicant

VS.

The State of Maharashtra

..Respondent

Senior Advocate Ashok P. Mundargi a/w Adv. N.M. Nadar a/w
Adv. Parth P. Shah i/b Sujit Lahoti and Associates for the
Applicant.

Ms. P. N. Dabholkar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 20, 2023

P.C. :

- 1.** Heard learned senior advocate for the applicant and learned APP for the State.
- 2.** This is an application for bail by the applicant- Dinesh Narayan Rai in connection with C.R. No.I-196 of 2017 dated 05/10/2017, registered with Kasarvadavali Police Station, under sections 4385, 387, 120-B and 34 of the Indian Penal Code, 1860 ("IPC" for short) and sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999.
- 3.** The applicant is the accused no. 2 and was arrested on

06/10/2017 for the incident that happened on the same day. So far as accused no. 1 Nitin Gopal Rai is concerned, on the ground of long incarceration, the trial Court has released him on bail by order dated 30/12/2022. The applicant's application for bail was rejected by the Special Judge prior to releasing of the accused no. 1 on bail. Learned senior advocate submitted that on the ground of parity, the present applicant i.e. accused no. 2 also deserves to be released on bail.

4. An affidavit has been filed by the prosecution opposing the application. Learned APP submitted that there are criminal antecedents recorded against the applicant. The antecedents are thus:

Sr. No.	Police Station	C.R. No.	Status
1	DCB/CID Mumbai Unit - 9	40/2003 under section 387, 34	Acquittal on-24/12/2017
2	DCB/CID Mumbai Unit - 9	42/2003 under section 387, 34	Acquittal on-25/12/2017
3	Kasarwadvli Police Station, Thane	II 30/17 u/s 3, 25 (1b)(a) of Arm Act, r/w 37(1), 135 of Maharashtra Police Act	Court pending C.C. No. 1119/2017

5. As can be seen from the above table, two of the antecedents are of the year 2003 and more than 10 years

prior to the alleged incident. The third antecedent is in respect of the very incident for which this offence was registered when the applicant was found in possession of the country-made pistol. It is material to reproduce the order dated 30/12/2022, passed by the Special Judge granting bail to the accused no. 1. The relevant portion of the order reads thus:

“3] F.I.R. dated 05.10.2017 is filed by Anant Gurav who at the relevant time was working as security assistant with Roma Builders, Hiranandani Estate, Ghodbunder Road, Thane. On 22.09.2017 he was present in the office. Meeting of consultant Mahesh Pamnani with other officers was going on. At about 4.00 p.m. Mahesh Pamnani received phone call on his mobile from unknown number 9751762456. Mahesh Pamnani directed the informant to receive the call. The caller asked him in vernacular "तुम महेश पमनानी बोल रहा है क्या ? मैं रवि पुजारी बोल रहा हूँ । आपका कन्स्ट्रक्शन का काम बहुत जोरसे चल रहा है । काम चालू रखना है तो मुझे १० करोड़ चाहिए । नहीं दिया तो मैं आदमी भेजकर तुम्हे बंदुक से ठोक दूंगा । पैसा कब और कहा देना है यह मैं बादमें फोन करके बताऊंगा ।". The caller then disconnected the call. The informant gave information to Mahesh Pamnani and his other colleagues about the call. The informant and his colleagues on the basis of news published in newspaper and electronic media were aware that Ravi Poojari was gangster and was extorting money from the builders and other businessmen. The informant approached police and lodged F.I.R.

4] On 06.10.2017 during the course of investigation the Anti Extortion Cell of Crime Branch, Thane, received information that two sharp shooters of gangster Ravi Poojari were coming to the office of builder at Hiranandani Estate for the purpose of firing. A trap was laid. Present accused and co-accused Dinesh Rai were apprehended. They were

found in possession of two pistols with 2 + 2 loaded cartridges. On that basis crime no. 30/2017 was registered at Kasar Vadavali police station. While making interrogation with accused, their involvement in the present crime was revealed. They disclosed that they did recce at the office of the informant. It was further revealed that Ravi Poojari through absconding accused Vijay salvi asked the accused to make firing at the office of the informant and for that purpose, he agreed to pay Rs. 10 lakh.

5] The accused were found to be members of an organized crime syndicate headed by Ravi Poojari. Therefore, the provisions of MCOC Act were invoked. Further investigation was carried out by Assistant Commissioner of Police, Crime Branch, Thane City. On getting sanction, charge-sheet came to be filed.

6] According to learned advocate for the accused, he is behind the bars since 06.10.2017. Charge is yet to be framed. He is not concerned with the offence. There is no material to show his connection with gangster Ravi Poojari. He has not committed any other offence with gangster. He is not indulged in continuing unlawful activity. Maximum punishment for the offence punishable under sections 387 of I.P.C. is upto 7 years. He is behind the bars since more than 5 years. Considering all these aspects, she prayed to release the accused on bail.

7] The prosecution has opposed the application. According to the learned Special Public Prosecutor, the accused on the instructions of Ravi Poojari hatched conspiracy at navik Bar and Restaurant, Andheri, Mumbai. There is evidence in the form of recording of his conversation with gangster Ravi Poojari. He has made number of international calls from his mobile. C.D.Rs. Have been collected. Bail application of co-accused Dinesh Rai has been rejected by the Hon'ble High Court. Other two offences have been registered against the accused at Samtanagar police station and Juhu police station. He is associated with gang leader Ravi Poojari against whom 46 offences have been registered. In case, if bail is granted, there is possibility of repetition of similar type of offence. Considering all these aspects, he prayed for rejection of the application.

8] I have considered rival submissions.

9] It may be noted that present accused did not make phone call to the informant or others. It is alleged that the informant received phone call by a person who introduced himself as Ravi Poojari. The mobile number from which the call was received is also mentioned in the F.I.R. According to learned Special Public Prosecutor, VOIP call was made, therefore, the caller could not be traced out.

10] There is memorandum panchanama of this accused in pursuance of which the place where conspiracy was hatched was discovered. In the memorandum panchanama, the accused has given information regarding details of the offence. But such disclosure is not admissible under section 27 of the Evidence Act.

11] C.D.R.s of mobile number of accused have been collected. As per statement of Police Naik Nitin Ovalekar, some international calls were made from the mobile numbers of the accused. But there is no material to show that the said calls were made to the gang leader Ravi Poojari.

12] The confession under section 18 of the MCOC Act of the accused was recorded. But admittedly, same has been retracted immediately.

13] The crime chart shows that crime no. 270/2004 for the offence under section 279 and 338 of I.P.C. at Samtanagar police station, crime No. 11/2015 under section 420, 465, 468, 471 read with section 34 of I.P.C. at Juhu police station and crime no. 30/2017 under section 3(25) of Arms Act at Kasar Vadavali police station are registered against the accused. Considering nature of offence registered at Samta nagar police station and Huhu police station, it can be said that they have no connection with the offence under MCOC Act.

14] Admittedly, the extortion amount was not paid. The applicability of provisions of section 387 of I.P.C. is, therefore, doubtful.

15] The learned advocate for the accused has submitted that he is entitled for bail only on the ground of his long incarceration. In support of submissions she has relied on the case of **Anil**

Shankar Patil Vs. State of Maharashtra [Bail Application No. 33/2022 decided on 29th July, 2022] and Mrugank Kalwalar @ Mikky Vs. State of Maharashtra [Bail application No. 2388/2021]. In both cases, the accused along with gangster D.K. rao were being prosecuted for the offences punishable under sections 387, 504, 506 of I.P.C. and under section 3(1)(ii), 3(2), 3(4) of MCOC Act. The earlier regular bail applications of the accused were rejected. The accused were behind the bars from 31.01.2018. the Hon'ble Bombay High Court by order dated 29th July, 2022 and 13th October, 2022 granted bail to the accused on the ground of their long incarceration. The Hon'ble Bombay High Court relied upon the decision of the Hon'ble Supreme Court in the case of **Union of India Vs. K.A. Najeed [(2021) 3 SCC 713]**.

16] The Hon'ble Bombay High Court in Anil Patil case (supra) in para. 8 has made following observations:

In the present case, as noted above the applicant has been arrested on 31st January, 2018. The prosecution framed charge against the applicant on 4th 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 4 1/2 years. There are 65 witnesses mentioned in the list of witnesses annexed to the charge-sheet. Though the learned Special P.P. 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 MCOCO Act is 5 years. The possibility of conclusion of trial of the present case in near future appears to be remote. Taking into consideration the fact that applicant is in custody for more than 4 1/2 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.

17] In Mrugank Kalwallkar Case, in para.9 the Hon'le Bombay High Court has observed that:

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.

18] It may be noted that in both the above referred cases, the incarceration of accused was for about four and half years. This period was considered as long incarceration. In one of the cases, charge was framed, 35 witnesses were to be examined. Therefore, the bail was granted.

19] In the present case, as discussed above, incarceration of the accused is for more than five years. In this case also accused are being tried for the same offence for which accused Anil Patil and Mrugank Kalwallkar were tried. Charge is yet to be framed. In view of huge pendency of old as well as other under trial cases in this Court, there are no immediate prospects of conclusions of trial. It would not be proper to detain the accused for indefinite period without trial.

20] The learned Special Public Prosecutor relied upon the case of **Mujahid Ibrahim Pathan vs. State of Maharashtra [Criminal Application No. 3990/2014]** wherein the Hon'ble Bombay High Court held that there is no requirement of two charge-sheets against every member of what is contemplated is pendency of more than one charge-sheet against the syndicate / gang involved in continuing unlawful activity.

21] He also relied upon the case of **Kavita Lankesh Vs. State of Karnataka [Diary No. 13309/2021 (SC) dated 21st October, 2021]**. The Hon'ble Supreme Court has held that for being a member of an organized crime syndicate, there is no requirement of two charge-sheets.

22] In my view the above decisions are of no avail to the prosecution because there is no material to connect present accused with the gang.

23] Considering all above aspects, the aspect of long incarceration and the law laid down by the Hon'ble Bombay High Court in **Anil Patil Case** and **Mrugank Kalwalkar Case**, the accused is entitled for bail."

(emphasis supplied)

6. On the ground of parity with the co-accused Nitin Gopal Rai who has been released on bail by the Sessions Court, even the present applicant can be granted bail. The applicant is in custody since 06/10/2021. The trial is not likely to conclude any time soon. Even the charge has not been framed. The prosecution proposes to examine 77 witnesses or maybe little lesser. For the same reasons mentioned by the trial Court while releasing the accused no. 1 on bail and on the ground of long incarceration, the applicant can be released on bail. Hence, the following order.

ORDER

(a) Applicant- Dinesh Narayan Rai in connection with C.R. No.I-196 of 2017, registered with Kasarvadavali 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) The applicant shall not pressurize prosecution witnesses.

(c) The applicant shall attend the trial Court regularly.

(d) The applicant shall produce address proof of himself and his two blood relatives along with their mobile numbers and names of police stations in whose jurisdiction they are residing.

(e) The applicant shall attend the office of Assistant Commissioner of Police (Detection-II), Crime Branch, Thane, once in a month preferable on 1st Monday of every month at any time in between 10.00 a.m. to 1.00 p.m. till conclusion of the trial.

(f) The applicant shall surrender his passport with the office of Assistant Commissioner of Police (Detection-II), Crime Branch, Thane, if he has been issued with one.

(g) The applicant shall not leave India without permission of the trial Court.

7. The application stands disposed of.

(M. S. KARNIK, J.)