

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

CRIMINAL BAIL APPLICATION NO.2337 OF 2023

Jinnah @ J.K. Nainamohammed Laibi ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Santosh M. Deshpande, Advocate for Applicant.
Mr. S.H. Yadav, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 7th SEPTEMBER 2023**

PC :

1. This is the third time that the Applicant has approached this Court for his release on bail. At the first instance, he had preferred the Criminal Bail Application No.3175 of 2018, which was dismissed as withdrawal vide order dated 18th February 2019. After that, he again preferred another Application vide Criminal Bail Application No.1382 of 2019, which was disposed of vide order dated 20th September 2019. After that, this is the third time, he has made Application for bail.

2. The Applicant is seeking his release on bail in connection with C.R. No.58 of 2015 registered at Poinad police station,

District Raigad. The trial is going on vide Special M.C.O.C. Case No.1 of 2016 before the Special Judge under M.C.O.C. Act Raigad at Alibag. The Applicant facing charges for the offence punishable under Sections 395, 397, 347, 412 of Indian Penal Code and under Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (for short “M.C.O.C. Act”) as well as under Section 3(1) r/w 25 of the Arms Act.

3. Heard Mr. Santosh M. Deshpande learned Counsel for the Applicant and Mr. S.H. Yadav, APP for the State.

4. The prosecution is that on 26th August 2015, four persons covering their face entered a jewelry shop. They were carrying choppers and revolver. By showing the weapons, they threatened persons present in the shop. They tied their hands and legs and removed jewelry. During the incident, the electricity was cut off and therefore, they tried to escape. One of them was caught on the spot and the others were successful in going away in a car. The Applicant was caught on the spot. According to the prosecution case, about one and half kilograms of gold and more

than 7 lakhs of cash was taken away by the Accused.

5. The Applicant was shown formally arrested on 27th August 2015 and since then he is in custody. The investigation was carried out and during the investigation, provisions of the M.C.O.C. Act were applied. In all ten Accused were arrested. There was recovery at the instance of other Accused. Three Accused were identified in the test identification parade. On this basis, the charge-sheet was filed. The trial proceeded further and as of today 38 witnesses are examined. In the meantime, except the present Applicant, nine other Accused are already released on bail. After the rejection of his earlier Applications for bail, other Accused were released on bail. Accused Imdad Ismail Mujawar was released on bail pursuant to the order dated 12th April 2023 passed in Criminal Bail Application No.543 of 2023. Even his earlier Bail Application was withdrawn. As of today, out of the 10 Accused, only the Applicant is in custody.

6. Learned Counsel for the Applicant submitted that the Applicant is in custody for more than eight years. The trial is not

concluded yet and is not likely to be concluded in a near future. Therefore, his Application may be considered sympathetically also on the grounds of parity. Learned Counsel for the Applicant states that the Applicant shall reside in Chembur Mumbai and will attend the Court on all dates at Alibag.

7. On the other hand, learned APP submitted that the prosecution intends to examine about eleven more witnesses. The trial is fixed for evidence on every Monday. He submitted that on merits, there is a strong case against the Applicant. He was caught at the spot and the revolver used by him was found in the shop. There are four other cases pending against him, which are of similar nature.

8. I have considered these submissions. As rightly submitted by the learned A.P.P; on merits, there are circumstances against the Applicant. He was caught at the spot. He was identified in the test identification parade but there was no recovery at his instance.

9. Apart from the merits of the case, today I am taking into

consideration the fact that he is in custody since 27th August 2015. More than eight years have passed. The trial is not likely to conclude in a near future. The trial is kept for recording of evidence only on Monday and there are still eleven witnesses to be examined. After that, there will be statements of ten Accused to be recorded under Section 313 of Cr.P.C. This will take further time. Thereafter, there would be arguments and then ultimately the trial will be decided. This likely to take a very long time. In the meantime, the Applicant has already undergone more than the minimum sentence provided under the provisions of the M.C.O.C. Act as well as under Section 397 of I.P.C. All other Accused in this case are released on the bail. Considering these aspect, I am inclined to grant bail to the present Applicant.

10. Hence, the following order:

O R D E R

- i) During the pendency and conclusion of Special M.C.O.C. Case No.1 of 2016 pending before the learned Special Judge under M.C.O.C. Act, Raigat

at Alibag, the Applicant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.30000/- (Rupees Thirty Thousand Only) with one or two sureties from Maharashtra in the like amount.

- ii) The Applicant shall attend the trial Court on every date unless prevented by a reasonable cause acceptable to the learned trial Judge.
- iii) The Applicant shall report to Tilaknagar Police Station, Mumbai on every first Tuesday of the month between 10:00 am to 11:00 am.
- iv) The Applicant shall seek permission of the trial Court if he wishes to travel outside Maharashtra.
- v) The Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)