

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3504 OF 2023

1. Govind R. Naidu
 2. Amar B. Patil
 3. Mahesh P. Nalawade
 4. Ganesh B. Shinde
 5. Swapnil T. Jadhav
 6. Nitin S. Vetal
- ...Applicants

V/s.

State of Maharashtra

...Respondent.

Ms Pooja Agarwal a/w. Mr. Prakash Chavan, Mr. Shubham Sane and Mr. Vipul Dushing for the Applicants.

Ms M. H. Mhatre, APP for the Respondent/State.

CORAM : N.R. BORKAR, J.
DATE : 12.12.2023.
(IN CHAMBER)

P.C. :

1. This is an application under Section 439 of Code of Criminal Procedure for bail.
2. The applicants came to be arrested in Crime No. 85 of 2010 registered at Rajarampuri Police Station, Dist. Kolhapur for the offences punishable under Sections 302, 307, 147, 148, 149, 341, 323, 120-B and 427 of the Indian Penal Code and Section 3 (1) (i) (ii), 3(2), 3(4) and 3(5) of the Maharashtra Control of Organized Crime Act (in short MCOC Act).
3. I have heard the learned counsel for the applicants and the learned APP for the respondent – State.

4. The learned counsel for the applicants submits that the applicants are in jail for more than 13 years. It is submitted that this Court by order dated 19 January 2023 refused to entertain the bail application of the present applicants and granted liberty to move the application after six months as the statement was made that only investigating officer is remained to be examined. It is submitted that the trial is not yet over and not likely to be over in near future as some of the witnesses are recalled. It is submitted that this Court and the Hon'ble Supreme Court has held that prolonged incarceration without completion of trial amounts to infringement of or violation of right of accused under Article 21 of the Constitution of India. It is thus submitted that the applicants may be released on bail.

5. On the other hand, the learned APP for the respondent/State submits that the applicants are members of organized crime syndicate and are involved in the serious offence of murder. It is submitted that the considering the seriousness of offence, the applicants may not be released on bail.

6. This Court while releasing the co-accused on bail by order dated 19 January 2022 in Bail Application No.995 of 2021 has observed :

Applying the principal enunciated herein above and the facts of this case, it is required to be noted that the applicant is in custody for more than 11 years and 6 months. It is not clear as to when the trial would come to an end. The prosecution has so far examined 21

witnesses. proposed list of 62 more witnesses. There is The future picture is unclear as to how long it would take to conclude the trial. While the applicant had preferred previous application for bail, this Court thought it fit to expedite the trial instead of granting bail. The trial Court was directed to conclude the trial within a period of six months vide order dated 11th December, 2019. At that time 19 witnesses were examined. Two years down the line, two more witnesses were examined. 11 and half years is a long period. There is passage of about two years from the issuance of the said directions and apparently only two witnesses are examined. Even before the declaration of lock-down, there was no speed in the trial. The applicant cannot be incarcerated in custody for indefinite period. Prolonged custody infringes Article-21 of the Constitution of India. Except apprehension, there is no material that the applicant would abscond or tamper with the evidence. Co-accused Sanjay Bhairu Waskar has been granted bail by this Court vide order dated 10th November, 2014. The said accused was involved in other cases. Apart from merits of the case, this Court had observed that, the said accused is in custody from 13th June, 2010, for a period of about 4 and half years. Hence, case for grant of bail is made out.

7. Considering the overall facts and circumstances, I am inclined to release the applicants on bail by imposing certain conditions. In the result, following order is passed:

ORDER

- A] The Application is allowed.
- B] The applicant Nos.1 to 6 be released on bail in Crime No. 85 of 2010 registered at Rajarampuri Police Station, Dist. Kolhapur for the offences punishable under Sections 302, 307, 147, 148, 149, 341, 323, 120-B and 427 of the Indian Penal Code and Section 3 (1) (i)(ii), 3(2), 3(4) and 3(5) of the Maharashtra Control of Organized Crime Act on furnishing P.R. Bond in the sum of Rs.1,00,000/- (Rupees One Lakh) each with one or two sureties in the like amount.
- C] The applicants shall stay out of jurisdiction of Rajarampuri Police Station, till further orders.
- D] The applicants shall provide the details of place where they would reside after release on bail to the trial Court and concerned police station.
- E] The applicants shall not leave District Kolhapur without prior permission of the Special Court.
- F] The applicants shall attend trial Court regularly on the date of hearing.

[N.R.BORKAR, J.]