



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

1067 BAIL APPLICATION NO. 514 OF 2024

Vishwajeet Ramesh Kasar.

... Applicant

Versus

The State of Maharashtra.

... Respondent

...

Mr. Shailendra S. Gangakhedkar, Advocate for Applicant.

Mr. Mukesh K. Goyanka, APP for Respondent/State.

Mr. Sudheer R. Zambre, Advocate to assist PP.

...

CORAM : **SANJAY A. DESHMUKH, J.**

DATE : 09th May, 2024.

P.C.:

1 Heard.

2 This is an application, under Section 439 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C."), for grant of regular bail in connection with Crime No.376 of 2023, registered with Ahmednagar Taluka Police Station, District Ahmednagar, for the offences punishable under Sections 302, 384, 386, 387, 323, 504, 506, 507, 120-B and 75 read with 34 of the Indian Penal Code (for short "the IPC") and under Section 3(1)(i), 3(2) and 3(4) of the Maharashtra

Control of Organized Crime Act (for short "MCOC Act").

3 It is averred in the report that on 30th April, 2023 at about 04:30 pm, the informant was in his cloth shop at village Walki, Tahsil and District Ahmednagar. His cousin sister Sakshi made him a phone call and told him that co-accused Indrajeet Kasar and Shubham Bhalsingh came to the house on motorcycle and they were demanding money for running the said shop continuously there to his aunt Shobha. She asked the informant to come immediately. The informant closed that shop and rushed to his house on motorcycle. The father of informant asked those two persons for what money is to be paid. That time again co-accused, Indrajeet demanded Rs.2,70,000/- to the father of the informant. They said if he wants to keep the shop running he has to pay that amount of Rs.2,70,000/-. His father told to leave that place. Co-accused Indrajeet abused Natha and again demanded that amount. On his refusal, co-accused Shubham and Indrajeet were enraged and they gave kick and fist blows over the chest of Natha. The informant and his brother Rushikesh tried to rescue Natha, but co-accused Shubham and Indrajeet beat them by fist and kick blows and they went away from that place. Natha became unconscious and was taken to the hospital. The informant received threatening phone call from this applicant. He threatened the informant as to whether he is willing to continue to run

his cloth shop or not and threatened to pay that amount. When these facts were disclosed by the informant to his brother Ravi, that time Ravi also told the fact to the informant that the applicant has also made phone call to him and threatened to kill him for that aspect. During the treatment, Natha succumbed to the injuries. The report was lodged against this applicant and other co-accused.

4 The bail is prayed on merits and for the medical treatment of the applicant as well.

5 The learned counsel for applicant pointed out a medical report of the applicant dated 19th February, 2024 submitted by the Chief Medical Officer, Ahmednagar Jail and that the applicant was operated for urinary track in the month of October, 2023.

6 The learned counsel for applicant submitted that the applicant is falsely implicated in this crime. There is no reliable evidence against him. The applicant has roots in the society. The applicant is suffering from illness of failure of kidney and severe diabetes. He was operated for urinary track infection. The Civil Surgeon, Ahmednagar is treating him, however, treatment is not properly being given to him. It is lastly prayed to allow the application on medical ground as well as on merits.

7 The learned counsel for applicant is relying upon the following authorities:-

I) In case of ***Bhanudas s/o Eknath Kotkar Vs. The State of Maharashtra***, (Criminal Miscellaneous Application No.1688 of 2017) of this Court dated 15th December, 2017, this Court in paragraphs 3 and 4 held as under:-

“3 Mr Yagnik, learned APP for the State has placed on record a copy of the communication dated 13th December, 2017 addressed by the Police Sub-Inspector of Koregaon-Park Police Station. Perusal of the said communication reveals that the applicant is admitted in the hospital from 7th December, 2017 and is undergoing treatment.

4 Taking into consideration that the Applicant is undergoing surgery on account of maxillectomy and further that the Applicant would be required to undergo further treatment, we find that the present application deserves to be allowed on humanitarian ground.”

II) In case of ***Aditya Ashok Marne Vs. State of Maharashtra, [2021] 0 Supreme (Bom) 1529***, this Court held that, there is no material showing involvement of applicant in the alleged offence to *prima-facie* infer it. Thus, without there being material on record applicant cannot be kept behind bar.

III) In case of ***Shaikh Azhar @ Chota Shaikh Azhar Vs. The State of Maharashtra*** (Bail Application No.571 of 2023) passed by this Court on 20th April, 2023, this Court held that, no any incriminating articles are recovered from the applicant. He deserves bail.

IV) In case of ***Anil Suresh Pawar @ Anil Punjabi Vs. The State of Maharashtra*** (Bail Application No.803 of 2023) passed by this Court on 12th July, 2023, this Court held that, unless the prosecution has some material showing the nexus of the applicant with the crime, the applicant deserves bail.

V) In case of ***Satyendar Kumar Jain Vs. Directorate of Enforcement, 2023 SCC OnLine SC 686***, it is held that, we think it appropriate that the citizen is having a right to take treatment of his choice, at his own expenses, in a private hospital.

VI) In case of ***Hari Sankaran Vs. Serious Fraud Investigation Office and another, 2024 SCC OnLine Bom 753***, this Court in paragraph 32 held as under:-

“32. Dehors merits and demerits as well as the statutory embargo as contemplated in Section 212(6)(ii) of the Act of 2013, powers of this Court under Article 21 of the Constitution are unfettered, in the sense, while exercising constitutional jurisdiction, statutory restrictions,

per se, do not oust the ability of this Court to grant bail on the ground of violation of part – III of the Constitution; inarguably, statutory restrictions vis-a-vis constitutional jurisdiction will have to be harmonized. Having taken into account, the entire facts and circumstances and the material on record, I am inclined to grant bail to the applicant, albeit, by imposing certain conditions.”

8 The learned APP for the State strongly opposed the application and submitted that the applicant is involved in the serious crime and MCOC Act is invoked against him. He fabricated false evidence for his medical treatment. He pointed out that applicant was earlier released on bail for medical treatment, however, he misused that liberty and committed one more crime i.e. murder punishable under Section 302 of the IPC. He also committed breach of the conditions of medical bail and did not return to the jail. He was absconding for nine months. No any explanation was given as to where he was for nine months. Thus, if he is released on bail, then certainly he will abuse the liberty and may commit similar nature of crime again.

9 The learned APP for the State about the merits of the case submitted that the applicant is the mastermind of the murder of Natha. His phone call details show that he made phone calls to the informant, his brother Ravi and the co-accused, who assaulted Natha. His

involvement in this crime shows that he is the wire-puller of this crime. Total 20 crimes are registered against him. The applicant has bad criminal antecedents. It is lastly prayed to reject the application.

10 The charge-sheet is not filed on record by the applicant. Perused the written notes of arguments of the applicant, the report and the phone call details as well as the various medical reports of the Medical Officer of Ahmednagar Jail etc.

11 It is not disputed that the applicant is suffering from serious ailments and now he is under treatment in the Civil Hospital at Ahmednagar. The call details shows that this applicant has made phone call to the informant, his brother, co-accused and witnesses. The applicant was released on bail for medical treatment. However, when the applicant was directed to surrender within 15 days by the Honourable Supreme Court, he did not surrender but absconded for a long period of 9 months and during that period he committed one murder. The chart showing crimes registered against the applicant is as under:-

Sr. No	Police Station	Crime number with section
1	Nagar Taluka	344/2019 u/s. 143 of Indian Penal Code.
2	Nagar Taluka	388/2019 u/s. 143 of Indian Penal Code.

3	Nagar Taluka	419/2019 u/s. 143 of Indian Penal Code.
4	Nagar Taluka	566/2019 u/s. 143 of Indian Penal Code.
5	Kotwali	351/2018 u/s. 406 of Indian Penal Code.
6	Moujpuri Dist. Jalna	151/2018 u/s. 420 of Indian Penal Code.
7	Moujpuri Dist. Jalna	153/2018 u/s. 406 of Indian Penal Code.
8	Moujpuri Dist. Jalna	157/2018 u/s. 420 of Indian Penal Code.
9	Kotwali	293/2016 u/s. 465 of Indian Penal Code.
10	M.I.D.C.	254/2015 u/s. 354(d) of Indian Penal Code.
11	Kotwali	391/2015 u/s. 394 of Indian Penal Code.
12	Karjat	60/2015 u/s. 306 of Indian Penal Code.
13	Kotwali	99/2015 u/s. 420 of Indian Penal Code.
14	M.I.D.C.	104/2014 u/s. 469 of Indian Penal Code.
15	Parner	204/2014 u/s. 420 of Indian Penal Code.
16	Nagar Taluka	92/2021 u/s. 384 of Indian Penal Code.
17	Nagar Taluka	1123/2020 u/s. 302 of IPC with MCOCA
18	Supa	33/2020 u/s. 353 of Indian Penal Code.
19	Supa	39/2020 u/s. 384 of Indian Penal Code.
20	Nagar Taluka	376/2023 u/s. 302 of IPC with MCOCA

12 It is not disputed that applicant was absconding for nine months. When the applicant was released on bail by the order of this

Court for 3 months, during that period, he was not operated. On the contrary, he committed the serious crime of murder during that period. If all these aspects are considered alongwith the written notes of arguments of this applicant and oral submissions of both the sides, certainly the applicant is not entitled for bail on the ground of medical treatment. There is a possibility of misuse of bail if granted to the applicant. If his treatment is not possible in the Civil Hospital, the Civil Hospital may suggest further mode of treatment to this applicant in J. J. Hospital in Mumbai or any other hospital.

13 As far as merits are concerned, the applicant is involved in the serious crime of murder. The name of the applicant is mentioned in the report. The allegation as to interpolation in FIR is a matter of evidence. The phone call details shows that he made phone call to informant and witnesses. There is transcript *Panchanama* dated 17.05.2023. The applicant made phone calls to the informant etc.. He has sent threatening messages from his mobile phone No.9921859094 to the informant and Raviraj son of Natha who was murdered. The MCOC Act is invoked against him. Thus, in view of Section 21 of MCOC Act, there is reason to believe that applicant is involved in this crime. This offence of murder with demand of extortion for ransom is committed. He is involved in twenty crimes. He is convicted in Crime No.391 of 2015. He has bad criminal antecedents. Therefore, the

case laws cited supra on behalf of the applicant are not helpful to him and therefore, those are not relied upon. Further, in view of the guidelines and the law laid down by the Honourable Supreme Court in the cases of ***Deepak Yadav Vs. State of Uttar Pradesh and another, (2022) 8 SCC 559***, and ***Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and another, (1987) 2 SCC 684***, that applicant if involved in serious crimes and there is possibility of commission of same nature of crimes, the bail cannot be granted. Thus, on merits also, the applicant is not entitled for bail. The application deserves to be rejected. The application is rejected.

14 Considering the serious nature of this crime and fact situation of the case that the applicant is booked for serious crime under the MCOC Act, the learned Special Court is directed to hear the case as expeditiously as possible and conclude it in any case within six months. For that purpose, the Trial Court is expected to keep the dates of hearing atleast twice or thrice in a week. Needless to mention that it is a sessions trial and word “sessions” means once it is started it shall not be stopped till it is concluded.

15 Inform the Trial Court accordingly.

[SANJAY A. DESHMUKH, J.]