



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**BAIL APPLICATION NO. 1421 OF 2024**

**KRUSHNA @ PAPYA DHONDIBA PAWAR  
VERSUS  
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr. Shailendra S. Gangakhedkar  
APP for Respondent : Mr. G. O. Wattamwar  
...

**CORAM : S. G. MEHARE, J.  
DATE : 12-09-2024**

**PER COURT :-**

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent.
2. The applicant seeks bail in C.R.No.119 of 2022 registered with Vimantal Police Station, District Nanded, for the offences punishable under Sections 302, 307, 120B, 201 read with Section 34 of the Indian Penal Code and Sections 3/25, 27(2) of the Arms Act and Sections 3(1)(i), 3(2), 3(4) of the Maharashtra Control of Organized Crimes Act (for short, "**MCOC Act**").
3. The applicant has a case that the evidence collected against him does not inspire confidence. He was a waiter in the hotel. So, naturally, he was to render services to the customers. The applicant has been roped in the crime on the basis of the statement under Section 18 of the MCOC Act. He is not concerned with the co-accused, who was accused of the earlier crime. In view

of the earlier order, while rejecting the bail application, the trial has been commenced. The applicant is a young boy with no antecedents to his discredit. Nothing is recovered from him.

4. The learned counsel for the applicant relies on the pronouncement of the Hon'ble Supreme Court in ***Rup Bahadur Magar @ Sanki @ Robin vs. The State of West Bengal, [Petition(s) for Special Leave to Appeal (Crl.) No(s).11589/2024 (Arising out of impugned final judgment and order dated 26.06.2024 in CRM(DB) No.1851/2024 passed by the High Court at Calcutta]***. It was observed in the above case as under;

*"In the case of High Court Bar Association, Allahabad v. State of U.P. & Ors., (2024) 6 SCC 267, a Constitution Bench of this Court has taken a view that as a matter of rule, the Constitutional Courts should not fix a time-bound schedule for conduct of cases before the Trial and other Courts and the said approach can be adopted only in very exceptional cases. Notwithstanding the pronouncement of law by the Constitution Bench of this Court, we have noticed that several High Courts while rejecting the bail applications, are fixing time-bound schedule for the conduct of trials. It cannot be that the bail is denied on the ground that the trial will be disposed of in a time-bound schedule"*

5. This case seems to be registered under the serious MCOC Act. However, the Court is of the view that fixing the time-bound schedule for a trial would not help him.

6. The learned counsel for the applicant fairly submits that the trial has been commenced, and 16 witnesses have been examined. The trial is in progress. However, he argued that mere recovery under Section 27 of the Indian Evidence Act is no ground to refuse him bail.

7. He also relied on the case of ***Mukesh Kantilal Chvan versus The State of Maharashtra, Criminal Bail Application No.2816 of 2019, dated 05.04.2021.*** In this case, the issue was about the legality and validity of the recording of a confession statement under Section 18 of the MCOC Act. The Court did not record the finding on the legality and validity of the statement under Section 18 of the MCOC Act. The specific observations were recorded in the above case that the effect of the statement on which the applicant has relied, will be determined at the time of the trial. It being a matter of trial, no advantage can be drawn at this stage. However, the Court, considering the period of incarceration for three years granted bail.

8. The learned A.P.P. has strongly opposed the application. He submits that circumstantial evidence collected against the applicant shows that he has played an active role in committing the crime. He helped and assisted the main assailants by many means. He knew everything about their conduct. He was taking

the accused on a bike for rekeying. He showed the place of recovery of the burned clothes with bullet pellets which were buried behind the Dhaba where he was working. He submits that the trial is going on an alternate day. Though the big list of witnesses was filed, the number of witnesses may be curtailed subject to the hostility of the witnesses. Since the trial is going on, it cannot be considered that it is being delayed. At the most, in a year, the trial may be concluded if all stake holders support the Court.

9. The question is, can a bail be granted to the applicant only on the ground of incarceration of two years?.

10. The Hon'ble Supreme Court, in the case of **Rup Bahadur Magar** (*supra*), and the case of **High Court Bar Association, Allahabad** (*supra*), observed that the High Court should fix the time-bound schedule for the conduct of cases only in very exceptional cases.

11. The Hon'ble Supreme Court in case of **Jalaluddin Khan vs Union of India, Criminal Appeal No.3173 of 2024 (2024 INSC 604)** in paragraph No.21, held as under;

“21. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case

could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution."

12. Considering the ratio laid down by the Hon'ble Supreme Court in above case, it can be understood that the Court should consider the bail application if the applicant deserves. It is not rule that in every case, the applicant is entitled to bail. The rule as regards to the bail is settled. While considering the bail application, the Court has to consider the gravity of the offence, the possibility of tampering with the prosecution witnesses, conduct of the accused, his involvement in crimes again and again, and the Court also should bear in mind, safety of the public at large.

13. Section 439 of Cr.P.C. gives an unfettered discretion to the High Court or Sessions Court, to admit an accused to bail, but that discretion must be exercised judiciously.

14. The Court is of the view that crime under the MCOC Act, is a serious crime. The interest and safety of public at large need consideration in this case. It is a case, where the International Criminal runs the gang. The ransom cases in Nanded District are mushrooming. Many citizens have lost the life. A common man should be assured of safety to his life and property. The law should extend its hands to look into such an issue. The people should have certainty in life. However, there was havoc in the District and apprehension of life has been spread over all the time. The people are living under threat to their lives. A common man has unsafe feeling. This could be perused from the repeated similar incidents in the District. It is a *modus operandi* of the International Gangsters, to involve the local persons. Hence, another side of the coin is also to be considered while granting bail for such a serious crime.

15. Naturally, the list of witnesses is big. However, if the accused did not admit documents placed in the notice under Section 294 of the Cr.P.C., the prosecution is bound to examine all relevant witnesses. The trial is expedited. It is fixed on alternate days. So, it cannot be said that the trial was deliberately delayed.

In every case where the evidence collected against the applicant, it cannot be said that the incarceration is a ground to grant bail and such rule cannot be applied as a thumb rule. Each case has its own facts and circumstances. Law is meant to protect the interest of public at large.

16. Though this applicant is first time criminal, he seems to have played an active role and helped the main assailants. He also tried to disappear material evidence. He being a waiter in the hotel may not be a ground to consider his bail application.

17. Considering the gravity of the offence, the way in which the crime was committed and the role played by the applicant, the Court is of the view that this is not a fit case to grant bail.

18. For the above reasons, the bail application stands rejected.

**( S. G. MEHARE )**  
**JUDGE**

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