



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 BAIL APPLICATION NO. 1798 OF 2023

Dharampreet @ Dhamme Ajitsingh Sahota

..APPLICANT

-VERSUS-

The State of Maharashtra

..RESPONDENT

Advocate for Applicant : Mr.Mohit R. Malpani h/f Mr.Granthi
Manpreet Ajeet Singh

APP for Respondent/State : Mrs.Pratibha J. Bharad

.....
CORAM : SANJAY A. DESHMUKH, J.
DATED : 7th MARCH, 2024.

PER COURT :-

1. This is an application for bail under section 439 of the Criminal Procedure Code, 1973 (for short, "Cr.P.C."). The applicant has been arrested in connection with crime No.273 of 2019 registered at Police Station Itwara, Dist. Nanded, for the offences punishable under sections 307, 120(B), 384, 397, 201, 109, 506, 75 of the Indian Penal Code, 3/25, 4/25, 27 of the Arms Act, sections 3(1) (ii), 3(2), 3(4) of the MCOCA Act.

2. Informant averred in the report that two unknown persons entered into the office of informant. One out of them opened fire with the help of pistol. Another was holding dagger. They

threatened to the informant that why he did not respond to the call of 'bhai' i.e. accused no.1 Harvindarsingh @ Ridha Sindhu, who is involved in the unlawful activities in commission of robbery, murder etc.

3. Thereafter, they threatened him that at about 2.00 a.m. bhai @ Harvindarsingh Sindhu will call him and he should respond to that. This incident took place on 10.02.2019. The informant stated that he can identify these persons if shown to him. The applicant was arrested on 23rd May, 2022. He was released on bail. Thereafter, MCOCA Act was invoked against him and again he was arrested by cancelling his earlier bail by the Court.

4. The learned advocate for the applicant submitted that after two years, the statement of this applicant is recorded under section 18 of the MCOCA Act. Delay caused for recording such statement is not explained. Even the statements of other witnesses are not recorded promptly. Call details of conversation between the accused is also not promptly recorded. The applicant is arrested in one more crime under the NDPS Act, however, he has been released on bail. The supplementary statements of some of the witnesses were recorded after two years. There is no prima facie case to invoke the MCOCA Act against the applicant. Investigation is

over and custody of the applicant is not necessary. One of the co-accused Jagjeetsingh @ Jaggi Dilbagsingh Sandhu is released on bail by this Court. The applicant is, therefore, entitled for parity. Ingredients of section 307 of the Indian Penal Code are not attracted. There is no material to prima facie establish the ingredients of sections under the MCOCA Act against this applicant. The learned advocate for the applicant submitted that though the applicant is resident of Punjab, he will attend the trial regularly. It is lastly prayed to allow the application.

5. The learned A.P.P. for the respondent-State has strongly opposed the application and submitted that the applicant is involved in serious crime punishable under the MCOCA Act. The applicant has actively participated in the crime. The applicant is likely to be sentenced for life imprisonment. There is a confessional statement of present applicant on record. The accused Harvindarsingh @ Rindha Charansingh Sandhu is habitual offender, who is absconding and he is involved in more than 21 cases. Red corner notice is also issued against him.

6. The learned advocate for the applicant during the arguments pointed out the order passed by this Court in Bail Application No.619/2023 dated 14th June, 2023. Para no.8 of the said

order reads as under :-

“8. It is really surprising that the bail which was granted to the applicant was cancelled in one fine morning without giving an opportunity of being heard to the accused. It is also surprising that the sections of MCOCA Act has been applied after two years of the release of the applicant on bail. Learned APP has pointed out that there are six crimes to the discredit of the applicant. He would also refer to the supplementary statement of the first informant dated 17.06.2022 i.e. after second time arrest of the applicant. In that statement, the complainant was asked to make a call on one unknown mobile phone number in the presence of one Firoz Khan Pathan, S.I. and their communication was recorded and during that communication, the person who had called him demanded Rs.80 lacs and this call was made on 10.12.2019. If it was so, whether said admission of the crime without the knowledge of the so-called accused is admissible is a question of law that is to be determined during the course of trial. That apart, this call was made on 10.12.2019 i.e. the next day of the alleged incident. Learned counsel for the applicant would submit that the telephonic communication was never the part of the record and this was brought first time after applying MCOCA Act. If this record was there, the police had sufficient material to apply the MCOCA Act forthwith. But the reason best known to the investigating officer why they waited for two years to apply the MCOCA Act, which is a serious offence. Reading the material as a whole, it seems that when the accused were produced for first time in the Court, the prosecution has no material to establish the nexus between the past crime and present crime. The prosecution also has no sufficient material to establish the involvement of the applicant as a member of organized crime syndicate. Considering the facts

of the case and inordinate delay in recording the supplementary statement about the demand of ransom from unknown number, it is difficult at this juncture to believe that there was a nexus between past crime and present crime. That apart, there is no progress in the investigation and inordinate delay in applying the provisions of MCOCA Act, this Court is of the view that this is a fit case to grant bail on certain stringent conditions.”

7. This Court in the case of ***Amar Bharat Kale V/s the State of Maharashtra in Criminal Bail Application No.1653 of 2018, dated 25th January, 2019 while granting bail to the accused prosecuted under the MCOCA Act has observed as under :-***

*“9. The release of co-accused by the order of this Court passed in Bail Application no. 1609/2017 in favour of Dhanaji Sakalkar is not in dispute. So far as order of release in favour of co-accused Dhanaji is concerned, the said accused was arrested on 04/04/2016 in Crime No. 97/2016 which was initially registered for offences under the Indian Penal Code and provisions of MCOCA was invoked after the sanction was granted on 04/11/2016. Since the law laid down by the Apex Court in the matter of **Dhivan Vs. State (2010 MLJ (Cri) 35)** provides for continuation of the bail till trial on such technical ground, prayer for bail came to be allowed.”*

8. Perused the charge-sheet and the provisions of the MCOCA Act, particularly sections 18 and 21 of it. The report was registered against the unknown persons. The applicant is arrested later on. Though his statement is recorded under section 18 of the

MCOCA Act, except the statement of this applicant, there are no call details of phone call of the applicant and co-accused. Even the test identification is not conducted.

9. Considering rule of parity that main co-accused is released on bail by this Court, at this stage meticulous consideration of evidence is not expected. The applicant is no doubt involved in crime under NDPS Act in which he is not released on bail, however, as per statement recorded under section 18 of the MCOCA Act, role of this applicant is that he drove the motorcycle and one of the co-accused Gopi fired with the pistol on the informant husband. The applicant is in jail since 23.05.2022. His right to speedy trial is affected. There is no scope for conclusion of trial as early as possible. Considering all these aspects, the applicant though arrested under MCOCA Act deserves to be released on bail on certain stringent conditions. Further to secure the presence of this applicant for trial as he hails from Punjab, he can be directed to deposit Rs.3,00,000/- in the trial Court which can be refunded after trial with interest. If he did not remain present for trial, it can be confiscated. The application therefore, deserves to be allowed. Hence, the following order.

O R D E R

I. Application is allowed.

II. The applicant in connection with crime No.273 of 2019 registered at Police Station Itwara, Dist. Nanded, for the offences punishable under sections 307, 120(B), 384, 397, 201, 109, 506, 75 of the Indian Penal Code, 3/25, 4/25, 27 of the Arms Act, sections 3(1) (ii), 3(2), 3(4) of the MCOCA Act be released on bail on furnishing personal bond of Rs.1,00,000/- with one surety of the like amount on following conditions:-

- a) The applicant shall deposit Rs.3,00,000/- in the trial/Special Court. On depositing that amount, the trial/Special Court is directed to fix that amount in fixed deposit and if the applicant is not attending the trial regularly then that amount is to be confiscated.
- b) The applicant shall not pressurize the witnesses and attend the trial regularly.
- c) The applicant shall not tamper the prosecution evidence.
- d) The applicant shall not enter into Nanded city till the conclusion of the trial except the dates fixed before the trial/Special Court, for attending the trial.
- e) The applicant shall mark his presence once in a week on every Friday in the police station till the conclusion of trial.
- f) The applicant shall give his mobile phone number and residential address to the concerned trial Court and police station within eight days of his release on bail.
- g) The applicant shall not indulge in any such criminal activities.

III) If the applicant is not following the above conditions, the trial/Special Court shall proceed to cancel his bail without reference

to this Court.

IV) After conclusion of the trial, amount of Rs.3,00,000/- be refunded to the applicant along with interest.

V) If the trial Court is not having three or more cases expedited by this Court or the Hon'ble Supreme Court, the Trial/Special Court is expected to conclude this trial as expeditiously as possible, within one year.

(SANJAY A. DESHMUKH, J.)

sga