

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

BAIL APPLICATION NO.3119 OF 2023

1. Akash Hanumant Burade
2. Rupesh @ Lalya Dashrath Survase ...Applicants
Versus
State Of Maharashtra ...Respondent

**WITH
BAIL APPLICATION NO. 655 OF 2023**

Sachin Suresh Devmare ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Aniket Nikam a/w Mr. Sajid Mahat i/by Amit Icham Advocate
for Applicant.

Ms.Mahalaxmi Ganapathy, APP for the Respondent – State.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 24th JUNE 2024
PRONOUNCED ON : 1st JULY 2024

Digitally signed
by D.A.ETHAPE
DN: cn=D.A.ETHAPE, o=JUDGE, email=D.A.ETHAPE@JUDGE, c=IN

PC.:

1. The Applicants, who are alongwith 24 co-accused in C.R. No.244 of 2018, registered with Pandharpur City Police Station, District Solapur, for the offences punishable under Sections 120B, 302, 303, 201, 143, 147, 148 and 149 of the Indian Penal Code, 1860 (“the Penal Code”), and Sections 3 & 4 read with Section 25 and Section 5 read with Section 27 of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act, 1951 and Sections 3(1)

(i), 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (“MCOC Act”) have preferred these Applications to enlarge them on bail.

2. The applicant Nos.1 and 2 in Bail Application No.3119 of 2023 are arraigned as accused Nos. 7 and 8. The applicant in Bail Application No.655 of 2023 is arraigned as accused No.26.

3. As distinct roles have been attributed to the applicant in Bail Application No.3119 of 2023 and Bail Application No.655 of 2023, I deem it appropriate to decide both the Applications together, with separate reasoning. The facts are noted in detail in Bail Application No.3119 of 2023.

BAIL APPLICATION NO. 3119 OF 2023

4. Briefly stated the prosecution case runs as under:-

(a) Gopal Bajirao Ankushrao (A18), is the leader of a Organized Crime Syndicate styled as “Sirji”. Gopal Ankushrao (A18) and his associates have created a reign of terror in and around Pandharpur city. Grave offences of murder, attempt to commit murder, kidnapping for ransom extortion and causing grievous hurt are committed by the members of the “Sirji” gang.

(b) Sandip Pawar (deceased), the son of the first informant, was a Councillor of Pandharpur Municipal Council. The deceased resisted illegal and unlawful activities of Sirji gang. Resultantly, the clout of Gopal (A18) and the “Sirji” gang was waning. Gopal (A18) and the members of his gang, thus had a grudge against the deceased.

(c) The prosecution alleges that actuated by diverse motives to eliminate the deceased, on 16th December 2017, initially accused Gopal (A18), Shital @ Vikas @ Vicky More (A5), Sandip Adhatrao (A6) and Sunil Wagh (A25) hatched a conspiracy to commit the murder of the deceased. Dada Ghasani @ Piraji Lagade (A20), Digambar @ Diga Janrao (A21), Shahrukh Shaikh (A22), Eknath Shinde (A23) and Bablu Shinde (A27), were drafted in as confederates in the said conspiracy. Deadly weapons and masks were provided to the assailants.

(d) In pursuance of the said conspiracy on 18th March 2018, while the deceased was having tea at Hotel Shriram Bhojnalaya, Station Road, Pandharpur, Akshay Surwase (A1), Manoj Shirsikar (A3), Sandip Adhatrao (A6), Onkar Jadhav (A11), Rais Khan (A14), Vishal Pawar (A16), Dada @ Piraji

Lagade (A20), Digambar Janrao (A21), Shahrukh Shaikh (A22), Eknath Shinde (A23), Bablu (Absconding A27), Sonu Pukle (A13) and Sagar @ Khandu Bansode (A24), came thereat on the motorcycles. They barged into Hotel Shriram Bhojnalaya. Sandip (A6), Onkar (A11), Digambar (A21), Bablu (A27) were armed with pistols. They shot at the deceased. Akshay (A1), Manoj (A3), Rais Khan (A14), Dada @ Piraji (A20) and Sagar (A24) gave blows by means of the scythes on the head, face, hands, chest and ears of the deceased in quick succession.

(e) The prosecution alleges in pursuance of the said conspiracy the task of keeping a watch on the deceased was interested to Pundalik Wanare (A2), Bhaktraj Dhumal (A4), Rupesh Survase (A8), the applicant herein, Sachin Waghmare (A9) and Pawan Adhatrao (A10) and Chintya @ Abhishek Survase (absconding A17).

5. During the course of investigation, it transpired that the applicants were also the members of the Organized Crime Syndicate, of which Gopal (A18) was the leader and the applicants were also confederates in the conspiracy to eliminate the deceased. The applicants had kept a watch on the movements of the deceased

and had informed the co-accused about the location at hotel Shriram Bhojnalaya, on the day of occurrence.

6. The applicants came to be arrested on 22nd March 2018. Eventually, the provisions contained in MCOC Act, 1999 were invoked and the Special Court has taken cognizance of the offences punishable under MCOC Act, 1999.

7. Mr. Nikam, the learned Counsel for the applicants submitted that the role attributed to the applicants is that of keeping a watch on the deceased and apprising the co-accused of the location of the deceased. As an identical role was attributed to Pawan Adhatrao (A10), who has been released on bail by an order dated 11th August 2022 in Bail Application No.1100 of 2021, the applicants are also entitled to the same dispensation. It was urged that qua Akash H. Burade (A7), apart from the disclosure statement leading to the recovery of the motorcycle, there is no other material to even indicate that Akash Burade (A7) was in touch with the co-accused nor any of the co-accused whose confessional statements have been recorded under Section 18 of the MCOC Act, 1999 have named the applicant Akash Burade (A7) as a confederate in the alleged conspiracy. It was submitted that the applicant has been in the custody for more than six years. The charge has yet not been

framed. In these circumstances, further detention of the applicant is wholly unwarranted, submitted Mr. Nikam.

8. As regards Rupesh @ Lalya Dashrath Survase (A8), Mr.Nikam would urge that not only the role attributed to Rupesh (A8) is exactly identical to that of Pavan (A10) but this Court has also dealt with the material which is sought to be pressed into service against Rupesh (A8) in the said order. The prosecution banked on the very same material which was sought to be pressed into service against Pavan (A10). Thus, principle of parity applies with full force.

9. In any event, the veracity of the statement of confidential witnesses recorded under Section 164 of Cr.P.C. is eroded as it was recorded after two years of the alleged incident. It was submitted that the fact that the applicant had made calls to the co-accused in close proximity to the alleged occurrence by itself does not have any incriminating tendency as apart from Akshay Surwase (A-1) rest of the co-accused are residents of Pandharpur. Moreover, the prosecution has not placed on record the transcript of the conversation. The mere fact that there is a CDR indicating that the applicant was in contact with co-accused without anything more, is of no legal assistance to the prosecution, urged Mr.Nikam.

10. Lastly Mr.Nikam submits that none of the applicants have any antecedents. The very invocation of the provisions contained in MCOC Act, 1999 was wholly unwarranted in the absence of any material to show that the applicants were the members of the alleged Organized Crime Syndicate.

11. Ms.Mahalaxmi Ganpathy, the learned APP, stoutly resisted the prayer for bail. It was submitted that the gravity of the offences cannot be lost sight of. The deceased was killed in a broad day-light by the co-accused, who were armed with deadly weapons. There is overwhelming material to indicate that the deceased was killed in pursuance of a well planned conspiracy. Qua the applicants, according to Ms.Ganapathy, there is material to show that they were keeping a watch on the deceased and on the day of occurrence also, they had pursued the deceased. Banking heavily upon the statement of witnesses recorded under Section 164 of the Code, (page No.1562 to 1564), it was urged that, at this stage, it cannot be said that there is no material to support the indictment against the applicant. Ms.Ganapathy laid particular emphasis on the CDR which indicates that Rupesh (A8) was in touch with the co-accused even on the day of the occurrence.

12. To begin with, it is necessary to note that the prosecution

does not allege that the applicants were either assailants or members of the unlawful assembly in prosecution of the common object of which, the deceased was killed. The role attributed to the applicants, in general, is that of being confederate in the conspiracy to eliminate the deceased, and, in particular, of keeping a watch on the movements of the deceased and apprising the co-accused about the location of the deceased.

13. In the aforesaid backdrop, the nature of the material qua Akash Burade (A7) and Rupesh Survase (A8), deserves to be appreciated, albeit *prima facie*, distinctly. Qua Akash Burade (A7), the only incriminating circumstance pressed into service appears to be the discovery made by the applicant Akash Burade (A7) leading to the recovery of a motorcycle bearing No.MH-13-CL-8929. The memorandum of the disclosure statement indicates that the applicant Akash Burade (A7) volunteered to show the house of his maternal uncle Kailas Dahale, where he had kept the motorcycle on which he had dropped Pundlik Wanare (A2) at Velarpur, and which was used by him for keeping a watch on the deceased.

14. Even if the memorandum of disclosure of statement is taken at par, *prima facie*, it appears that the fact that the deceased was killed, was apprised by Pundlik Wanare (A2) to the applicant and

thereupon the applicant had dropped Pundlik Wanare (A2) at Velapur. This being the nature of disclosure statement allegedly made by the applicant Akash Burade (A7), the admissibility of a large part of the said statement in evidence, becomes a matter for trial as the historical facts narrated by the applicant Akash Burade (A7) cannot be said to be distinctly related to the facts discovered pursuant to the said disclosure statement. It neither appears that any of the co-accused named the applicant as confederate in the confessional statements recorded under Section 18 of the MCOC Act, 1999. Nor there is any CDR which shows that the applicant was in touch with rest of the co-accused.

15. As regards Rupesh Survase (A8), the submission of Mr.Nikam that Rupesh Survase (A8) is similarly circumstanced, like Pawan Adhatrao (A10), who has been released on bail, appears to be well merited. While releasing Pawan Adhatrao (A10), this Court had observed, *inter alia*, as under:-

17] The first of the two confidential witnesses informed the learned Magistrate that prior to the day of incident, the applicant and co-accused Rupesh (A8) were seen roaming around Bhadule Chowk and Arihant Optical. On the day of occurrence, the applicant and co-accused had followed the deceased. The second of the confidential witnesses informed the learned Magistrate that he learned from one Rahul Kaulge that the applicant and co-accused Rupesh (A8) were keeping a vigil on the movements of the deceased. On the day of occurrence, they had kept watch on the deceased since 8.00 am. in the morning. The said

witness further claimed that a couple of days prior to the occurrence he had sounded of the deceased that few boys were following whom, to which the deceased paid no heed. Immediately preceding the occurrence, according to the second witness, he had seen the applicant and co-accused Rupesh (A8) following the deceased to hotel Shriram Bhojnalaya.

18] The submission on behalf of the applicant that the veracity of the claim of the aforesaid confidential witnesses become suspect as their statements came to be recorded belatedly cannot be lightly brushed aside. The statements of both confidential witnesses came to be recorded on 24th January, 2020. The incident occurred on 18th March, 2018. The applicant came to be arrested on 20th July, 2018. There is a time-lag of almost 22 months in recording the statements of the confidential witnesses from the date of the occurrence. In fact, the second confidential witness, who professes to throw light on the details of the alleged surveillance by the applicant and Rupesh (A8) claimed that he was working in the office of the deceased. The delay, in such circumstances, cannot be said to be immaterial or inconsequential.

19] The second circumstance of being in constant touch with the co-accused now deserves consideration. If the second confidential witness is to be believed, on the day of occurrence, the applicant and co-accused Rupesh (A8) were seen continuously talking on phone with 2 to 3 other persons in the vicinity of the scene of occurrence. The prosecution has relied upon the record of the call details.

20] I have perused the said record. Indeed, the record indicates that the applicant had telephonic conversation with co-accused Akshay (A1), Rupesh (A8), Sandip (A6) and Shital (A5) over a period of time. What is of critical significance is the record of the conversation on the day of occurrence, especially in the light of the role attributed to the applicant. On the night intervening 17th and 18th March, 2018, at about 00.40 am. the applicant had an incoming SMS from Akshay (A1) and on the day of occurrence at about 1.08 pm. the applicant had an incoming call from Rupesh (A8). The incident allegedly occurred at about 1.00 pm. on 18th March, 2018. The aforesaid call detail record, in the facts and circumstances of the case, *prima facie*, cannot be said to be of such frequency, duration or proximity as to lend support to the statement of the second confidential witness that the applicant and co-accused Rupesh (A8) were seen continuously speaking on their phones with 2 to 3 persons, after they allegedly followed the deceased to hotel Shriram Bhojnalaya.

21] I find substance in the submission of Mr. Nikam that in the facts and circumstances of the Bitstream Charter case, the fact that the applicant had received a single call from co-accused Rupesh (A8) in proximity to the time of occurrence, by itself, may not form a strong incriminating circumstance. The further submission of Mr. Nikam that the applicant had telephonic conversation, at different points of time, with four of the co-accused, who also happened to be the residents of Pandharpur, *prima facie*, does not lead to the only hypothesis of the applicant being a confederate in the alleged conspiracy, cannot be said to be without substance, especially in the absence of any overt act or other strong incriminating circumstance to connect the applicant with the alleged offences.

16. The fact that the role attributed to the applicant is, by and large, identical to that of Pawan Adhatrao (A10) is borne out by the aforesaid observations in as much as similar material was considered qua Pawan Adhatrao (A10) in which the name of the applicant also finds mention. Nonetheless, I will briefly advert to the circumstances pressed into service against the applicant.

17. Ms. Ganapathy, heavily banked upon the statement of Rahul Kaulge recorded before the learned Magistrate under section 164 of the Code of Criminal Procedure on 24th January, 2020 wherein it was stated that since 8 days prior to the occurrence, the applicant and the co-accused Pawan Adhatrao (A10) were keeping a watch on the deceased and on the day of occurrence also he had seen both Rupesh Survase, the applicant, and Pawan Adhatrao (A10) follow the deceased to Shreeram Hotel.

18. As noted above, the statement of Rahul Koulge came to be recorded after almost 22 months of the alleged occurrence. This Court had further noted that the said witness claimed to have been working in the office of the deceased and thus the aspect of delay would assume more significance. Prima facie, the prosecution will have to surmount the challenge on the count of delay in recording the statement of the said witness.

19. Suraj Chauhan, another witness whose statement was also recorded in the month of January, 2020 under section 164 of the Code, stated that the applicant and Pawan Adhatrao (A10) used to roam around Bahadule Chowk and Arihant Optical. He claimed that he was informed by Rahul Koulge that they were keeping a watch on the deceased. On the day of occurrence the applicant and Pawan Adhatrao (A10) had followed the deceased. The aspect of delay again impairs the statement of Suraj Chouhan.

20. That leaves the circumstance of the CDR. The reasons which weighed with this Court in releasing Pawan Adhatrao (A10) govern the claim of the applicant Rupesh Survase (A8) for bail. It was noted that the fact that the applicant Rupesh Survase (A8) had called Pawan Adhatrao (A10) in proximity to the time of occurrence, may not by itself form an incriminating circumstance

since the applicant had telephonic conversation with four of the co-accused who were residents of Pandharpur. Admittedly, the transcript of the conversation is not placed on record. The aspect as to whether the CDR alone would lead to the hypothesis of the applicant being a confederate in the alleged conspiracy would warrant consideration at the trial.

21. At this juncture, the fact that none of the applicants have any antecedents assume critical salience, especially in the backdrop of the fact that the applicants are sought to be roped in as members of the organized crime syndicate. Undoubtedly, it is not necessary that two charge-sheets for the offences punishable for more than three years imprisonment must have been lodged against each member of the organized crime syndicate. If it could be shown that the members of the organized crime syndicate indulged in continuing unlawful activity, singularly or jointly, either as members of the organized crime syndicate or on behalf of such syndicate, the offence of 'organized crime' as envisaged by MCOC Act, 1999 can be said to have made out. Continuing unlawful activity is qua the organized crime syndicate and not each member. A useful reference, in this context, can be made to the decision of the Supreme Court in the case of **Zakir Abdul Mirajkar vs. State of**

Maharashtra and Ors.¹. What has to be established is the nexus between the individual accused and the organized crime syndicate. For that purpose, the role attributed to the accused and the antecedents assume significance.

22. In the case at hand, the role attributed to the applicants and the nature of material arrayed against the applicants, coupled with the absence of antecedents, *prima facie*, justifies an inference that the applicants may not be guilty of the offence for which they have been arraigned. The absence of any antecedents also justifies an inference that the applicants may not indulge in identical offences, if released on bail.

23. In any event, the Court cannot lose sight of the fact that the applicants have been in custody since 2018. It is trite that a long period of incarceration without a reasonable prospect of expeditious conclusion of the trial, impairs the right to speedy trial, a facet of the fundamental right guarantee under Article 21 of the Constitution of India. It has been held that the statutory restrictions in the matter of grant of bail melt down in the face of such a long period of incarceration, without trial (**Union of India vs. K.A. Najeeb**²).

1 2022 SCC OnLine Sc 1092

2 (2021) 3 SCC 713.

24. In the facts of the case, having regard to the period of incarceration of the accused as well as the number of witnesses which the prosecution proposes to examine, these does not seem to be a realistic prospect of conclusion of the trial in near future as even the charge has not been framed till date. In such circumstances, further detention of the applicants would impinge on the constitutional guarantee of right to life and personal liberty.

25. I am, therefore, inclined to exercise discretion in favour of the applicants.

BAIL APPLICATION NO.655 OF 2023

26. The Applicant Sachin Devmare (A-26) had allegedly provided shelter to the assailants, who had travelled from Pune to Pandharpur in pursuance of the conspiracy hatched to kill the deceased.

27. Mr. Nikam, the learned Counsel for the Applicant submitted that the only role attributed to the applicant is that of giving shelter to the co-accused. The said accusation is sought to be substantiated by the prosecution primarily on the strength of the confessional statement of the co-accused purportedly recorded under Section 18 of the MCOC Act, 1999. However, those confessional statements

are of no assistance to the prosecution as the co-accused have disowned the confessional statements when they were produced before the learned Magistrate. The retraction of the confessional statements is almost instantaneous. If the confessional statements are eschewed from consideration, there is no material to even remotely connect the applicant with either organized crime syndicate or any member of the said syndicate. It was submitted that the prosecution does not allege that the applicant was one of the persons, who perpetrated the assault. Thus, there is no nexus between the applicant and the alleged offences.

28. Mr. Nikam further submitted that the applicant cannot be roped in as a member of the organized crime syndicate as well as the applicant had no antecedents. An offence punishable under the Maharashtra Money-Lending (Regulation) Act, 2014 came to be registered against the applicant while the applicant was allegedly absconding. The applicant has been in custody since 29th August 2021. Therefore, the applicant deserves to be enlarged on bail.

29. In opposition to this, Ms. Ganapathy, the learned APP, strongly opposed the prayer for bail. It was submitted that the applicant was very much a confederate in the conspiracy as the hired assailants, who were also privy to the conspiracy, stayed with the applicant at

the latter's farm house. Apart from the confessional statements of the co-accused, there is a statement of the neighbour of the applicant which clearly indicates that the applicant had kept the assailants at his farm house. The applicant was thus fully involved in the conspiracy to commit the murder of the deceased. Moreover, after the occurrence, for more than three years, the applicant was absconding. He could be arrested only in the month of August 2021. In such circumstances, the applicant does not deserve to be enlarged on bail.

30. Three of the co-accused namely, Bandu @ Nitin Bharat Barangule (A-19), Dada Ghasani @ Piraji Lagade (A-20) and Digambar @ Diga Janrao (A-21) made statements under Section 18 of the MCOC Act implicating applicant, as the person at whose farm house the assailants, who had come from Pune, stayed on 17th and 18 March 2018. Bandu Barangule (A19) stated that on 17th March 2018 at the instance of Vicky More (A-5), he had taken four of the co-accused to the farm house of the applicant. One of them Digambar Janrao (A-21) was dropped thereat on Bandu's motorcycle. In verification before the learned Magistrate, Bandu Barangule (A19), however, disowned the said statement.

31. Dada Ghasani @ Piraji Lagade (A-20) also stated that on 17th

March 2018, one person carried them to the said field. They stayed there overnight. Digambar Janrao (A-21) also stated that Bandu Barangule (A19) had taken him and the co-accused Shahrukh Shaikh (A22) and Dada Ghasani (A20) to the said farm house. They stayed there overnight and on 18th March 2018 they proceeded to the scene of occurrence and assaulted the deceased. Both Digambar Janrao (A21) and Dada Ghasani (A20) disowned the confessional statements before the learned Magistrate.

32. At this stage, the fact that co-accused had retracted the confessional statements cannot be the sole consideration to draw an inference that the accused may not be guilty of the offences for which he has been arrayed. In a situation of the present nature, the utility of defining and punishing the 'organized crime' comes to the fore. The persons who facilitate the commission of the organized crime by providing the logistical support, are equally complicit as those who carry out the actual assault. Whether confessional statements of the co-accused deserve to be discarded on account of the fact that they retracted those statements, would be a matter for adjudication at the trial.

33. Providing shelter and facilitating the stay of the assailants, *prima facie*, indicates that the applicant was a confederate in the

conspiracy. I am, therefore, not inclined to accede to the submission on behalf of the applicant Sachin (A-26) that he is entitled to claim parity with Pavan Anil Aadhatrao (A-10) or for that matter Akash Hanumant Burade (A-7) and Rupesh @ Lalya Dashrath Survase (A-8).

34. The Court cannot loose sight of the fact that the applicant had made himself scarce for three years. Therefore, this conduct of the applicant would be a matter which may bear upon the determination of the complicity of the applicant. This factor also dissuades the Court from recording the satisfaction that the applicant will not indulge in identical offences, if released on bail. I am, therefore, not inclined to exercise discretion in favour of the applicant Sachin Suresh Devmare (A-26).

Hence, the following order.

: O R D E R :

(i) Bail Application No.3119 of 2023 stands allowed.

(ii) The applicant Nos.1 Akash Hanumant Burade and No.2 Rupesh @ Lalya Dashrath Survase in BA No. 3119 of 2023 be released on bail in CR No.244 of

2018, registered with Pandharpur City Police Station, District Solapur, on furnishing a P. R. Bond in the sum of Rs.50,000/- each, with one or two sureties in the like amount each, to the satisfaction of the learned Special Judge.

(iii) The applicants shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

(iv) The applicants shall not contact any of the co-accused and indulge in the activities identical to the one's for which he has been arraigned in this case.

(v) The applicants shall furnish their permanent residential addresses and contact details to the Police Inspector, Pandharpur City Police Station, within a period of one week of their release from the prison, and intimate the change, if any.

(vi) The applicants shall mark their presence at Pandharpur City Police Station on the first Monday of every Month in between 10.00 am. to 12.00 noon., for the period of one year, from the date of their release and, thereafter, on the first Monday of July,

August, September and October of each year, till the conclusion of trial.

(vii) The applicants shall regularly attend the proceedings before the Special Court.

(viii) Bail Application No.655 of 2023 preferred by applicant Sachin Suresh Devmare (Accused No.26) stands rejected.

(ix) By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant or the co-accused and the learned Special Judge shall not be influenced by any of the observations in further proceedings in the Special Case arising out of CR No.244 of 2018.

(x) All concerned to act on an authenticated copy of this order.

(N. J. JAMADAR, J.)