

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

CRIMINAL BAIL APPLICATION NO.3993 OF 2023

Pintu @ Chimaji Shivaji Lashkar

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr. Aniket Nikam a/w Mr. Sumit Patil a/w Mr. Pratik Jadhav a/w Ms. Shreya Anuwal a/w Mr. Dushyant Digambar i/b. Mr. Amit Ichan, Advocate for Applicant.
- Mr. Prashant P. Jadhav, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 08th AUGUST, 2024

P.C. :

1. This is the second time, the Applicant has approached this Court for his release on bail. The Applicant is seeking his release on bail in connection with C.R.No.308/2019, dated 23/05/2019, registered with Tembhurni Police Station, Solapur Rural. Initially, the FIR was lodged u/s 392 r/w 34 of the Indian Penal Code. Subsequently, the provisions of Maharashtra Control of Organized Crime Act, 1999 (MCOCA, Act) were applied and after the investigation, the charge-sheet was filed for

commission of offence punishable u/s 3(1)(I)(ii), 3(2) and 3(4) of the MCOC Act.

2. Heard Mr. Aniket Nikam, learned counsel for the Applicant and Mr. Prashant P. Jadhav, learned APP for the State.
3. Learned counsel for the Applicant submits that there is change in circumstances since the previous order dated 12/03/2021 was passed in Criminal Bail Application No.1048 of 2021. Learned counsel for the Applicant had withdrawn that Bail Application after arguments, when the Court expressed disinclination to grant relief in that application. Learned counsel for the Applicant submitted that subsequent to that a co-ordinate bench of this Court in the case of co-accused Sunil @ Gotya Hanmant Survase passed an order dated 10/07/2024 in Criminal Bail Application No.3153 of 2023 granting him bail. He submitted that besides claiming parity, the Applicant is also claiming his release on bail on the ground of long incarceration. He submitted that the Applicant was arrested on 06/12/2019 and since then there is absolutely no progress in the trial. His previous Bail Application was withdrawn on 12/03/2021. Even

thereafter more than three years have passed and still even the charges are not framed. Considering these submissions, I am entertaining the present Bail Application.

4. The prosecution story is that on 23/05/2019 at about 05.30 a.m. the first informant, his wife and son were travelling in a car. He stopped for answering nature's call. When he got down from the car, three unknown persons approached them. One of them showed knife to the informant and made him hand over his mobile phone, cash of Rs.1,000/-, his wrist watch and gold ring. In the meantime, his two other associates went near the car and threatened his wife with a knife and then removed her gold ornaments worth Rs.1,24,000/-. After that, all of them went away. The FIR was registered. The investigation was carried out. It was transpired that this offence committed by an organized crime syndicate, led by one Samadhan Kachare. Therefore, the provisions of MCOC Act were applied. Three accused in this case were arrested. The Applicant was arrested on 06/02/2019. The antecedents show that the gang leader Samadhan Kachare had 11 antecedents and the other co-

accused Sunil Survase had 4 antecedents. Survase had common antecedents with the gang leader Kachare. However, the Applicant did not have a single antecedent to his discredit. The investigation was carried out. The test identification parade was conducted and three of them were identified in different test identification parades. The informant and his wife identified all three of them. There was recovery of ornaments from the gang leader Kachare. There was recovery of knife at the instance of the present Applicant and there was no recovery at the instance of Survase. The charge-sheet was filed. The gang leader Kachare was granted bail because the Investigating Officer did not file the charge-sheet within time. The co-accused Survase was granted bail by a co-ordinate bench of this Court as mentioned earlier.

5. Learned counsel for the Applicant submitted that in this background, the principle of parity will apply in favour of the Applicant, particularly when Survase is granted bail in this case. Besides that, since the trial has not started, the long incarceration of the Applicant be taken into account. He also laid emphasis on the fact that there were no criminal

antecedents. Therefore, it was doubtful whether he was a member of an organized crime syndicate.

6. Learned APP opposed these submissions mainly on the ground that there was confession of the gang leader recorded u/s 18 of the MCOCA, which attributes a particular role to the present Applicant. In that confessional statement the gang leader Kachare has stated that the Applicant was the one who had shown knife to the wife of informant and had snatched ornaments. He submitted that it is a distinguishable feature between the Applicant and the co-accused Survase. He submitted that the principle of parity will not apply in this case.

7. I have considered these submissions. As far as the role attributed the co-accused Kachare is concerned, he has stated that the Applicant showed knife to the informant's wife. However, if the FIR and the statement of the informant's wife are seen, the specific roles are attributed to all the three offenders. Therefore, there is no difference between the roles played by the three of them. Therefore, if the other two accused are released on bail and in particular if Survase is released on

bail, on similar set of evidence, then the principle of parity will apply in favour of the present Applicant in the changed circumstances of granting bail to the co-accused Survase.

8. It is also important to note that all the three accused were identified in the test identification parade at different point of time. Therefore, even there is no difference between quality of evidence against them. There is no recovery of any ornaments or cash amount from the present Applicant. This has to be looked in the background of the Applicant's long incarceration since 06/12/2019. The investigating agency and the prosecuting agency has taken no efforts to conduct the trial expeditiously. Even the charges are not framed. Therefore, it is quite uncertain as to when the trial will commence and conclude. Therefore, the Applicant cannot be kept in detention as an under-trial prisoner indefinitely. Apart from that, the lack of antecedents against the Applicant is the another factor in his favour. The co-ordinate bench has already observed in the order dated 10/07/2024 referred to hereinabove that there were reasonable grounds to believe that the said co-accused Survase was not involved in the

alleged offence and further if released on bail, there was no possibility that he would commit similar offence. If such observations are applicable to the co-accused Survase, who had atleast 4 antecedents against him, the same observations can apply with more force in the case of present Applicant, who does not have antecedents. Therefore, considering this background, there is scope to believe that bar u/s 21(4) of MCOCA will not come in the way of the Applicant to claim bail in this case. In this view of the matter, I am inclined to grant bail to the present Applicant. The Applicant can be granted bail on the similar conditions imposed on the co-accused Survase.

9. Hence, the following order :

ORDER

- (i) In connection with C.R.No.308/2019, dated 23/05/2019, registered with Tembhurni Police Station, Solapur Rural, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant shall not enter into the territorial

jurisdiction of the police station of Tembhorni Police Station, Solapur, till the conclusion of the trial, except for the purpose of attending the trial.

- (iii) The Applicant shall provide his address and name of the nearest police station from his residence to the Investigating Officer.
- (iv) He shall attend the nearest police station on 1st and 16th of every month between 12.00 p.m. to 02.00 p.m., till conclusion of the trial except on the dates of the trial.
- (v) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper with the evidence.
- (vi) Liberty is granted to the State to apply for cancellation of bail if the Applicant commits similar offence.
- (vii) The Applicant shall attend the trial before the Special Court regularly on every date unless exemption is granted by the Special Court.
- (viii) The application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)