

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.396 OF 2023
WITH
INTERIM APPLICATION NO.1712 OF 2023

VISHAL
SUBHASH
PAREKAR

Rahul Gopinath Kalyankar

...Applicant

vs.

The State of Maharashtra

...Respondent

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WITH
BAIL APPLICATION NO.1012 OF 2023

Deepak Baburao Chavan

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. R.G. Gadgil a/w. Mr. Swapnesh Salvi, Mr. Ummehani
Tambawala, for the Applicant in BA No. 396 of 2023.

Mr. Kamlesh Gujar, for the Applicant in BA No. 1012 of 2023.

Mr. S.R. Agarkar, APP, for the Respondent/State.

Mr. Narayan Dalvi, PSI, Vileparle police station.

CORAM : N. J. JAMADAR, J.

DATE : FEBRUARY 5, 2024

P.C.:

1. The applicants, who are arraigned in MCOC Special Case No. 8 of 2016 arising out of C.R. No. 337 of 2015 registered with Vileparle police station for the offences punishable under sections 395, 363, 341, 412, 468, 201, 170 of Indian Penal Code, 1860; section 3 read with 25 of Arms Act and sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (MCOC Act, 1999), have preferred these applications for bail.

2. Rahul Kalyankar, the applicant in BA No. 396 of 2023, is alleged to be the leader of an organized crime syndicate. Deepak Chavan, the applicant in BA No. 1012 of 2023 and the co-accused are the members of the said organized crime syndicate. The applicant Rahul had been indulging in continuing unlawful activities and has thus been arraigned in a number of crimes.

3. The indictment in the instant case is that on 24th October, 2015 the first informant, who works with a company, collected two boxes containing gold and diamonds worth Rs. 2,48,30,000/- from the Airport, and was carrying those boxes on an Activa scooter. The applicant and the co-accused intercepted him . They were in a 'Swift Dzire' car with a fake number plate. Co-accused Ashish Bhosale falsely proclaimed that he was a crime branch official. Co-accused Naseem Khan picked up the jewelry boxes and fled away. The first informant was forced to board the said car. The applicant Rahul had allegedly pointed out a country made revolver and threatened to shoot him. The first informant was thereafter taken to a spot near Jogeshwari Fly Over on Western Express Highway and dropped of the car. Stolen property was thereafter shared by the applicants and the co-accused.

4. The learned counsel for the applicants submitted that the applicant Rahul is in custody since 25th October, 2015 and the applicant Deepak is in custody since 28th October, 2015. Only one witness has been examined by the prosecution. The second witness is still in the witness box. The prosecution has cited more than 100 witnesses. Three of the co-accused have been granted bail by the trial Court. Three co-accused have been released on bail by this Court. Therefore, as the applicants are in custody for more than 8 years and 3 months, the applicants deserve to be released on bail as it is very unlikely that the trial can be concluded in a near future.

5. The learned APP resisted the prayer for bail. The learned APP pointed out that the applicant Rahul has been arraigned in a number of crimes. He is facing trial for the offences punishable under MCOC Act, 1999 in a case arising out of C.R. No. 13 of 2007 registered with Wagle Estate police station. Therefore the interdict contained in section 21(5) of the MCOC Act, 1999 comes into play, despite long incarceration. Thus, the applicant Rahul does not deserve to be released on bail. Qua the applicant Deepak, the learned APP fairly submitted that there is no commonality of offences registered against the gang leader and the applicant Deepak. However, having regard to the role of the applicant and the

recovery of the stolen property at his instance, he does not deserve to be released on bail.

6. The learned counsel for the applicant Rahul joined the issue by canvassing a submission that out of 12 crimes registered against applicant Rahul, he has been acquitted in 6 cases and convicted in 2 cases. In rest of the crimes he is on bail. The learned counsel further submitted that the fact that the applicant was on bail in MCOC Special case arising out of C.R. No. 13 of 2017 registered with Wagle Estate police station when the instant crime was allegedly committed, by itself, does not dis-entitle the applicant from the relief of bail.

7. Reliance was sought to be placed on an order passed by this Court in **Eklakh Rahim Shaikh @ Peti vs. The State of Maharashtra**¹. In the said case, a learned single Judge of this Court, inter alia, observed that sub clause (5) of section 21 of MCOC Act has to be interpreted keeping in mind the legislative object. The Court is not expected to mechanically reject the bail only because the accused was arrested under MCOCA, while on bail. Harmonious reading of the provisions would achieve the legislative intent by maintaining right balance. In the said case, having regard to the long period of

1 BA No.3792 2022 Dt. 27/03/2023.

incarceration (i.e. 6 ½ years) and the slow pace of the trial, the learned single Judge found the restrictions contained in section 21(4) and 21(5) of the MCOC would not operate.

8. In the case at hand, the facts as regards the period of incarceration are stark. The applicants are in custody for more than 8 years and 3 months. Indisputably, the trial has commenced. However, incontrovertibly, recording of evidence of only one witness is complete. The second witness is still in the box. The prosecution proposes to examine a seizable number of witnesses. Having regard to the pace of the trial, it is extremely unlikely that the trial can be concluded within a reasonable period.

9. The statutory restrictions in the matter of grant of bail (where the trial is not likely to be completed within a reasonable period), are required to be appreciated and balanced against a competitive consideration of the right to speedy trial. A procedure which denies the conclusion of trial within a reasonable period and thereby deprives personal liberty for an inordinately long period, stands foul of the right to life and personal liberty guaranteed under Article 21 of the Constitution of India. Such prolonged incarceration without a realistic prospect of conclusion of the trial within a

reasonable period, has been held to override the statutory restrictions in the matter of grant of bail.

10. Undoubtedly, the statutory restrictions on the grant of bail in special enactments like MCOCA, 1999, NDPS Act, 1985 and Unlawful Activities Prevention Act, 1967, are to achieve the object of the respective enactments. Having regard to the nature of the offences, the legislature has considered it expedient to put additional restrictions in the matter of grant of bail. There can be no qualm over the fact that the offences being of grave nature, release of the accused therein, is conditioned by the twin satisfaction. However, there is, at the same time, a competing consideration of unjustified denial of personal liberty. These provisions are, thus, premised on the justification that the trial in which those provisions apply are also concluded expeditiously.

11. In the case of **Shaheen Welfare Association V/s. Union of India and Ors.**² the Supreme Court enunciated that stringent provisions can be justified on the presumption that the trial of the accused will take place without undue delay. The observations in paragraph No.10 read as under :

“10. Bearing in mind the nature of the crime and

2 (1996) 2 SCC 616

the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh case³, on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21.”

12. In Union of India V/s. K.A.Najeeb (supra), where the accused was facing trial for the offences punishable under the Unlawful Activities Prevention Act and the rigour of Section 43-D(5) of the said Act, was attracted, the Supreme Court observed as under :

“12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“NDPS”) which too have somewhat rigorous conditions for grant of bail, this Court in *Paramjit Singh v. State (NCT of Delhi)*⁴, *Babba v/s. State of Maharashtra*⁵ and *Umarmia v/s. State of Gujarat*⁶ enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

15 This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v/s. Union of India*⁷, it was held that undertrials cannot indefinitely be detained pending

3 (1994) 3 SCC 569

4 (1999) 9 SCC 252

5 (2005) 11 SCC 569

6 (2017) 2 SCC 731

7 (1994) 6 SCC 731

trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.

17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of UAPA per-se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

13. The Supreme Court has thus enunciated in clear and explicit terms that the rigours of the provisions which restrict the grant of bail will meltdown where there is no likelihood of the trial being completed within a reasonable time and the period of incarceration already undergone has exceeded substantial part of the prescribed sentence.

14. In the light of the aforesaid position, reverting to the facts of the case, it is necessary to note that the major offence punishable under section 395 of Penal Code entails imprisonment for life or rigorous imprisonment for a term which may extend to 10 years. The offences punishable under sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act, 1999 entail punishment for imprisonment which shall not be less than 5 years or which may extend to imprisonment for life.

15. The situation which thus obtains in the case at hand is that the period of incarceration of the applicants far exceeds the minimum sentence prescribed under sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act, 1999. The period of incarceration is nearing completion of alternate sentence prescribed for the major offence punishable under section 395 of the Penal Code.

16. In the aforesaid view of the matter, the period of incarceration of the applicants is such that the statutory restrictions in the matter of grant of bail, melt down under its weight. I find substance in the submission of the applicants that having regard to the pace of the trial it is extremely unlikely that the trial can be concluded in the immediate future. Further deprivation of the personal liberty of

the applicants in the peculiar facts of the case, would clearly fall foul of the right to life and personal liberty guaranteed under Article 21 of the Constitution of India. Indeed the antecedents of the applicant Rahul Kalyankar deserve to be taken into account in putting conditions while directing the release of the applicants on bail.

Hence, the following order :

ORDER

- (i) The applications stand allowed.
- (ii) The applicants be released on bail in MCOCA Special Case No.8 of 2016 arising out of C.R.No.337 of 2015 registered with Vileparle police station on furnishing P.R. bond of Rs.1,00,000/- with one or more sureties in the like amount, each.
- (iii) On being released on bail, the applicants shall not enter Mumbai, Mumbai Suburban District and Thane District till the conclusion of trial except for the purpose of attending trial and police station.
- (iv) The applicants shall report Vileparle police station on first Monday of every month between 11.00 a.m. to 1.00 p.m.
- (v) The applicants shall furnish their contact details and residential addresses to the police station Officer, Vileparle police

station, while residing outside Mumbai, Mumbai Suburban and Thane Districts and shall keep him updated in case there is any change.

(vi) The applicants shall report to the jurisdictional police station where the applicants would reside, on every alternate Sunday between 11.00 a.m. to 1.00 p.m.

(vii) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing the facts to court or any police officer. The applicants shall not tamper with evidence.

(viii) The applicants shall regularly attend the proceedings before the jurisdictional Court.

(ix) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Applications disposed.

(N. J. JAMADAR, J.)