



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

BAIL APPLICATION NO. 1496 OF 2022

PRADEEP PANDURANG MANE	.. APPLICANT
VS.	
THE STATE OF MAHARASHTRA	..RESPONDENT

Mr.Satyavrat Joshi i/b Mr.Jaydeep Mane, for the applicant.
Ms.Manisha Devkar a/w Mr.Shankar Katkar, for complainant.
Mr. S. A. Karmakar, APP for the State.
Mr.S.H. Koli, Akluj police station present.

CORAM : M. S. KARNIK, J.

DATE : APRIL 16, 2024

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.
2. This is an application for bail in respect of the offences punishable under sections 302, 120B read with 34 of the Indian Penal Code (hereafter 'IPC' for short) and under sections 3 and 25 of the Arms Act and under sections 3(1) (i), 3(2), 3(3) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 ("MCOC", for short) registered on 29/12/2016 vide C.R. No.517 of 2016 with Akluj Police Station.

3. There are in all 9 accused. The applicant is the accused no.1. The date of the incident is 29/12/2016. The applicant was arrested on 23/04/2017. The case of the prosecution is that the FIR is lodged by Aniket Jalinder Umbre on 29/12/2016. It is alleged that the complainant and his maternal uncle Nanasaheb Dilip Aasbe were talking in front of Ashwini Hotel. Two persons aged about 25 years arrived there on motorcycle with mask on their faces. They fired at Nanasaheb Aasbe. He tried to run from the place of incident. The accused again fired at him. Nanasabeb Aasbe succumbed to the injuries. On completing investigation, charge-sheet was filed.

4. It is the allegation that the co-accused including the applicant committed murder of Nanasaheb Dilip Aasbe. Learned counsel for the applicant submitted that there is serious doubt as to the identity of the applicant. It is further submitted that the test identification parade was not conducted. It is further submitted that CCTV footage only indicates that there are two persons who are seen on the motor-bike. Learned counsel for the applicant relied upon the decision of the Supreme Court dated 08/04/2024 in

¹**Raju Madhukar Bhosale Vs. The State of Maharashtra.** He submits that Their Lordships have enlarged the co-accused on bail on the ground of long incarceration as he had undergone more than 7 years of incarceration as on the date and the prosecution had cited about 84 witnesses who are yet to be examined and the charges have also not been framed by the trial Court. The reliance is also placed on the decision of this Court dated 31/01/2023 in Bail Application No. 2830 of 2022 in **Sachin Damodar Ekhatpure Vs. The State of Maharashtra.** He submits that even the applicant be enlarged on bail on the ground of long incarceration. Learned counsel for the applicant relied upon the paragraph 9 of the order dated 31/01/2023 enlarging the co-accused Sachin Damodar Ekhatpure which reads thus :

“9. In the case of *Yogesh Vinod Ahiwale Vs. The State of Maharashtra* (supra), the Apex Court has granted bail to the accused, who was prosecuted for offences under the provisions of MCOC Act. The prosecution had contended that, there are series of crimes committed by some of the members of crime syndicate. The apex Court observed that, it is not necessary at this stage to consider the issue with regard to applicability of the MCOCA inasmuch as any observation thereon would prejudice the rights of either of the parties at the stage of trial. However,

1 Petition for Special Leave to Appeal (Crl.)No. 12050 of 2023.

taking into consideration the fact that, the Petitioner has already been incarcerated for a period of about seven years and even the charges are not yet framed, bail can be granted. In the case of *Mohamad Iliyas Mohamad Bilal Kapadiya* (Supra), the apex Court has dealt with the prayer for bail by the Petitioner therein who was prosecuted under the provision of Gujarat Control of Terrorism and Organised Crime Act, 2015 (for short GCTOC Act'). It was contended on behalf of the Petitioner that, firstly, it is required to be satisfied that the activities undertaken is either singly or jointly as a member of an organized crime syndicate or on behalf of such a crime syndicate. Secondly, in respect of such an activity, more than one charge-sheet must have been filed in the preceding period of last ten years. The Apex Court observed that, only one offence registered against the Petitioner which has been committed by seven accused out of two are the members of crime syndicate. In respect of other offences, no members of the syndicate are arrayed as accused. For invoking the provisions of GCTOC Act, the condition will have to be fulfilled that such an activity should be prohibited by law for the time being in force. Such activity is cognizable offence punishable with imprisonment of three years or more. Such an activity is undertaken either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate; that, in respect of such an activity more than one charge-sheet must have been filed before the competent Court and the charge-sheet must have been filed within a preceding period of ten years and that the Courts have taken cognizance of such offences. In that case only one charge has been filed in respect of activities which was undertaken by the Petitioner as a member of crime syndicate on behalf of syndicate. The Apex Court granted bail to the accused/petitioner therein. In the case of *Indrani Pratim Mukerjea* (supra), the Petitioner accused was prosecuted for offences under Section 302 of IPC. It was urged before the Apex Court that, the accused is in custody for six and half years. She would be entitled for benefit of special dispensation under Section 437 of Cr.P.C. The prosecution has cited large number of witnesses. The trial Court will not complete soon since large

number of witnesses were yet to be examined. The trial Court had commenced and 68 witnesses were examined. The apex Court considered the fact that, the accused was in custody for six and half years and without commenting on merits of the case had observed that, even if 50% of the remaining witnesses would be given up by the prosecution, the trial would not be completed soon. The accused was directed to released on bail. In Criminal Bail Application No.1413 of 2021 preferred by *Vishal Madhukar Khedekar and Sandesh @ Dadya Xaviour Holkar* (supra), this Court had granted bail to the said accused vide order dated 20th October 2022. They were prosecuted for the offences under the IPC as well as under the provisions of MCOC Act. Considering the fact that, the accused were in custody for a period of about five years and that the prosecution is relying upon several witnesses and it was not clear as to when the trial would be over, Bail was granted to the applicant/accused. In the case of *Ajit Bhagwan Tiwde* (supra), this Court has considered the prayer for bail by an accused who was prosecuted for offences under Sections 302, 307 and other connected offences and offences under the MCOC Act. The primary contention of the accused therein was that, he was in custody for long period of time and the trial was not concluded. Though the trial has commenced, there were no chances of it getting concluded soon. This Court noted the effect of long incarceration in custody and also rigours provided under Section 21(4) of the MCOC Act. Reference was made to several decisions of the Apex Court including the decision in the case o *Union of India Vs. K. A. Najeeb f Union of India Vs. K. A. Najeeb* (2021) 3 SCC 713; *Angela Harish Sonatakke Vs. State of Maharashtra* (2021) 3 SCC 723; *Chintan Vidyasagar Upadhyay Vs. State of Maharashtra* passed by Apex Court in Special Leave to Appeal (Cri.) No. 2543 of 2021 vide order dated 17th September 2021 and the decision of Division Bench of this Court in the case of *Iqbal Ahmed Kabir Ahmed Vs. The State of Maharashtra* passed in Criminal Appeal No. 355 of 2021 decided on 13th August 2021. Reference was made to various other decisions of the Apex Court in support of principle of right to speedy trial. After analysis of various decisions it was

observed that, incarceration in custody for long period without trial or completion of trial infringes Article 21 of the Constitution of India. Considering the observations of the Apex Court in the case of *Union of India Vs. K. A. Najeed* (supra), this Court has dealt with the rigors under Section 21(4) of the MCOA Act and grant of bail on the ground of long incarceration in custody. It was observed that, Courts are required to perform balancing act so as to reach a golden mean in between the rights of an individual and those of society at large. The sympathy for undertrials who are in custody has to be balanced with gravity/magnitude of crime, likelihood of crime etc. The analysis may be based on facts of each case."

5. In my opinion, the applicant cannot claim parity with co-accused Raju Madhukar Bhosale as well as Sachin Damodar Ekhatpure who are enlarged on bail as it is the applicant who according to prosecution is an assailant and has also played an active role in his capacity as a gang-leader. There is a statement of one witness-Prakash Tanaji Jadhav which is in the nature of extra judicial confession which reveals that the co-accused Parmeshwar @ Deva Jadhav and the applicant committed the said offence. No doubt, it is necessary to bear in mind that extra judicial confession is a weak piece of evidence and it may be used as a corroborative piece of evidence in tandem with substantive evidence. Pandharpur police arrested the said Parmeshwar @ Deva Jadhav on 11/01/2017. Police

recovered 3 live cartridges from the co-accused Parmeshwar @ Deva Jadhav. At the time of arrest of said Parmeshwar @ Deva Jadhav, he assaulted the police squad therefore C.R. No. 9 of 2017 was registered with Karkamb police station for the offences punishable under sections 353, 332, 323 of IPC read with sections 3, 25 of Arms Act. The memorandum statement of Parmeshwar @ Deva Jadhav was recorded and as per his memorandum one country made pistol was recovered and seized under section 27 of the Evidence Act. One motorcycle which was used by the accused persons at the time of firing and one Car in which the co-accused Dashrath Mane and other accused persons ran away have been seized.

6. During the course of investigation, it was revealed that the present applicant who is a gang-leader and 2 other co-accused committed robbery in a jewellery shop at Mhaswad and all accused fired on Hanumant Pujary at Umarani, Karnataka. The memorandum statement of the co-accused Parmeshwar @ Deva Jadhav was recorded in context as to in what manner the criminal conspiracy was hatched and at which place. As per the memorandum panchanama dated

19/01/2017, the criminal conspiracy to commit murder of Nanasaheb Aasbe was hatched in the tin shade belonging to the applicant hence section 120B of IPC came to be added. During the course of investigation, it is revealed the the accused persons had formed a organized crime syndicate which is run by the applicant who is the gang-leader. The gang members were involved in a series of offences in the area of of Pune, Satara and Solapur districts. There are several antecedents reported against the applicant.

7. It is pertinent to note that during the course of investigation, the statement of the co-accused Ramesh Vishwanath Dhule was recorded under section 18 of the MCOC Act which reveals the complicity of the applicant. The co-accused Sachin Damodar Ekatpure who has been enlarged on bail assisted the applicant by giving him shelter in the house of Nilesh More by giving a wrong name to landord-Nilesh More. The statement of Nilesh More has been recorded during the investigation. The applicant was arrested by police from the room which belonged to Nilesh More. In the light of the materials and considering the applicant's involvement based on the incriminating

materials, the applicant being a gang-leader against whom there are several bodily offences registered, I am not inclined to enlarge the applicant on bail. No doubt, the applicant is incarcerated for seven years but considering his role and the gravity of the offence, this is not a fit case to enlarge him on bail. The application is rejected.

(M. S. KARNIK, J.)