IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2928 OF 2023

William Albert Rodriques ... Applicant
versus
State of Maharashtra ... Respondent

Mr. Rajendra J. Rathod with Mr. Sohail Ahmed, Mr. Dhruv B. Jain, Mr. Sameer Shaikh for Applicant.
Mr. S.R.Aagarkar, APP for State.
Mr. Arun Thorat, PI, A.E.Cell, Crime Branch, present.

CORAM: N.J.JAMADAR, J.

DATE : 28 FEBRUARY 2024

P.C.

1. Heard the learned Counsel for the parties.

2. The applicant is arraigned in MCOCA Special Case No.7 of 2019 arising out of C.R.No.42 of 2019 registered with Goregaon Police Station (subsequently transferred to DCB, CID as C.R.No.9 of 2019) for the offences punishable under Sections 387 read with 34 of the Indian Penal Code and Section 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999.

3. Briefly stated, the gravamen of indictment against the applicant is that Ravi Sulya Pujari @ Ravi Pujari is the leader of the organized crime syndicate. The applicant and accused No.2 Akash B. Shetty are the members of the said organized crime syndicate. Gang leader has been indulging in continuous unlawful activities for organized crime syndicate. A number of crimes have been registered against the gang

leader.

4. As a part of the continuous unlawful activities, during the period 26 November 2018 to 18 January 2019, the gang leader had made extortion calls to the first informant and his relatives repetitively and demanded a sum of Rs.2 Crores. Upon the first informant and his relatives not responding, the gang leader had threatened to kill the first informant and his family members. Thus, the first informant lodged a report leading to registration of C.R.No.42 of 2019 initially for the offences punishable under Section 387 read with Section 34 of the Code.

5. During the course of investigation, it transpired that the applicant and co-accused Akash, being the members of the organized crime syndicate, had furnished the details of the projects of the first informant and also their personal information and mobile phone numbers. Thus, with the prior approval of the competent authority, the provisions contained in the Act, 1999 were invoked and post completion of investigation, in view of the previous sanction accorded by the competent authority, the Special Court took cognizance of the offences punishable under the Act, 1999.

6. Learned Counsel for the Applicant submitted that there is no material to show that the applicant is a member of the organized crime syndicate, nor the applicant was involved in the alleged attempts to extort money from the first informant. The applicant has been roped in on the basis of suspicion only. Moreover, the applicant has been in custody for five years and two months and despite

an order passed by this Court in BA No.799 of 2022 preferred by the co-accused Akash to conclude the trial within a period of 8 months, there has not been substantial progress in the trial. Thus, on account of long period of incarceration also, the applicant deserves to be enlarged on bail.

7. Learned APP submitted that since the trial has commenced and four witnesses have been examined, this Court has already disposed of BA No.797 of 2022 preferred by Akash, co-accused with a direction for expeditious conclusion of the trial, the application does not deserve to be entertained. A direction for expeditious conclusion of the trial would suffice, urged Mr. Aagarkar.

8. In view of the order dated 4 August 2023 in BA No.797 of 2022, wherein 8 months time was stipulated for conclusion of the trial, this Court considered it appropriate to have the benefit of the report of the learned Special Judge seized with Special Case No.7 of 2019 as regards the progress of the trial and the likely time required to conclude the trial. The learned Special Judge has informed that three witnesses have been examined and the 4th witness was under cross-examination. The prosecution proposes to examine 20 more witnesses. According to the learned Special Judge, approximately one years time is required to conclude the trial in the Special Case No.7 of 2019.

9. On the merits of the matter, the role attributed to the applicant is that of furnishing information regarding the first informant and his relatives to co-accused

Akash, who in turn, allegedly, passed on the said information to the gang leader. It is alleged, the applicant had collected mobile phone numbers from a witness, conducted recee of the projects of the first informant, at the instance of co-accused Akash, and supplied the requisite information. Two circumstances are pressed into service against the applicant. One, the statement of witness X. Two, the confessional statement of the applicant recorded under Section 18 of the Act, 1999.

10. The statement of witness X indicates that the co-accused Akash had introduced him to the applicant. Whenever Akash came to meet witness X, the applicant, invariably, accompanied Akash. Co-accused Akash and the applicant had stated before him that they were working for the gang leader. Co-accused Akash and the applicant had allegedly visited his stall in the month of November and obtained mobile phone numbers of the first informant. The statement of witness X stops at that qua the applicant.

11. Prima facie, the statement of witness X does not indicate that the applicant had played any role in either obtaining the mobile phone numbers of the first informant and his family members or otherwise conducting a surveillance as alleged. The statement of witness X primarily adverts to the role of the co-accused Akash. Moreover, witness X came to be examined as PW2 in Special Case No.7 of 2019. PW2 simply declined to subscribe to the prosecution version. That leaves the confessional statement allegedly made by the applicant as the material on the strength of which the

prosecution proposes to bring home the charge to the applicant.

12. Apart from the aspects of admissibility and reliability of the confessional statement, the question of weight to be attached to the alleged confessional statement in the absence of any other material to show that the applicant was a member of the organized crime syndicate, may warrant consideration at the trial.

13. Evidently, the prosecution does not claim that the applicant has criminal antecedents. It is not at all a case that the applicant has been arraigned along with the gang leader or co-accused Akash in any other crime. Undoubtedly, the requirement of two chargesheets is qua the organized crime syndicate and not individual members thereof. However, there must be nexus between the person sought to be roped in as a member and the organized crime syndicate. Prima facie, in the case at hand, the existence of such nexus appears debatable.

14. In any event, the applicant has been in custody for five years and two months. The offence punishable under Section 387 of IPC entails punishment which may extend to 7 years. The offences under Sections Section 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999, entail punishment which may extend to imprisonment for life, with a minimum sentence of five years. The applicant has already undegone more than five years incarceration as an undertrial prisoner

15. As noted above, despite the order dated 4 April 2023, the trial could not

be concluded within the stipulated period. The prosecution proposes to examine 20 more witnesses. It is extremely unlikely that the trial can be concluded within a reasonable period. Therefore, I find it rather difficult to accede to the submission of the learned APP that a direction for expeditious conclusion of the trial would meet the exigency of the situation.

16. It is well recognized that a prolonged period of incarceration without a real prospect of expeditious conclusion of the trial infringes the right of an accused to speedy trial, a facet of fundamental right guaranteed under Article 21 of the Constitution of India. In such a situation, the statutory restrictions in the matter of grant of bail melt down.

17. In the totality of the circumstances and especially the role attributed to the applicant and the material sought to be pressed into service against the applicant, in my view, the provisions contained in Section 21(4) of the Act, 1999 do not constitute an impediment for the exercise of discretion in favour of the applicant.

18. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – William Albert Rodriques be released on bail in C.R.No.42 of 2019 registered with Goregaon Police Station on furnishing a PR bond in the sum of Rs.1,00,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence at DCB, CID, Mumbai on first Monday of every month between 11 am to 1 pm for a period of two years or till the conclusion of the trial whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence. The applicant 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 him from disclosing the facts to Court or any police officer.

(v) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) 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 trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N.J.JAMADAR, J.)