

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.3532 OF 2023

Akhtar Rafique Shaikh	...Applicant
<i>alias</i> Akhtar Irfan Shaikh	
<i>Versus</i>	
The State of Maharashtra	...Respondent

Mr. N.M. Nadar, Advocate, for the Applicant.
 Mr. Prasanna P. Malshe, APP, for the Respondent-State.
 Mr. Rangnath A. Gitte, P.S.I.-Tulinj Police Station, Palghar, present.

CORAM: MADHAV J. JAMDAR, J.
DATED : 19th APRIL 2024

PC:-

1. Heard Mr. Nadar, learned Counsel for the Applicant and Mr. Malshe, learned APP for the Respondent-State.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1.	C. R. No.	1121 of 2018
2.	Date of registration of F.I.R.	19/10/2018
3.	Name of Police Station	Tulinj, District-Palghar
4.	Section/s invoked	392, 411 r/w. 34 of the Indian Penal Code, 1860

		3(1)(II), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 ("MCOC Act")
5.	Date of incident	18/10/2018
6.	Date of arrest	27/11/2018 in IPC offence (Bail-12/03/2019) 12/04/2019 after MCOC applied.
7.	Date of filing of Charge-sheet	05/07/2019

3. The present Applicant is the Accused No.1. There are total four Accused persons. Accused No.4 is absconding.

4. As per the prosecution case, the Applicant came on a motorcycle with Accused Nos.2 and 3 and snatched the chain of the first informant.

5. It is the contention of Mr. Nadar, learned Counsel for the Applicant that Accused Nos. 2 and 3 who are having the same role have been released on bail. In any case, he submitted that the Applicant was arrested on 27th November 2018 and that he is under long incarceration of about 5 years and 6 months. He submitted that there is no progress in the trial and even the charge

is also not framed yet. He submitted that therefore, the Applicant's fundamental right to speedy trial is affected.

6. On the other hand, Mr. Malshe, learned APP for Respondent-State strongly opposed the Bail Application. He submitted that the material on record clearly shows the involvement of the Applicant in the offence in question. There is a confessional statement, recovery of a motorcycle at the instance of the Applicant and Applicant has been identified in the Test Identification Parade ("T.I. Parade"). He further submitted that there are 25 antecedents against the Applicant. He also submitted that provisions of the MCOC Act have also been invoked and therefore, rigours of Section 21(4) of the MCOC Act will apply to the present case.

7. Mr. Nadar, learned Counsel for the Applicant submitted that Accused Nos.2 and 3 having same role, have been granted bail. The T.I. Parade has been conducted after a period of one month and in the said T.I. Parade, Accused Nos. 2 and 3 have also been identified. He submitted that the said confessional statement has been retracted. In any case, he submitted that the Applicant is

entitled to be released on bail on the ground of violations of fundamental right of the Applicant of speedy trial.

8. Perusal of the record shows that in the present case, the incident in question occurred on 18th October 2018, F.I.R. was lodged on 19th October, the Applicant was arrested on 27th November 2018 and was granted bail on 12th March 2019. However, thereafter, provisions of MCOC Act were invoked and therefore, the Applicant was re-arrested on 12th April 2019. Till date, there is no progress in the trial and even the charge is also not framed yet. The Applicant is incarcerated since 27th November 2018, except for a period of one month when he was released on bail. Thus, the Applicant is incarcerated since about 5 years and 6 months and even charge is not framed yet.

9. Speedy trial is one of the facets of right to life and liberty guaranteed under Article 21 of the Constitution of India. Speedy trial is an essential ingredient of “reasonable, fair and just” procedure guaranteed by Article 21 and it is the constitutional obligation of the State to devise such a procedure as would ensure

speedy trial to the Accused.¹

10. The Supreme Court of India in *Rabi Prakash v. State of Odisha*² and more particularly in paragraph Nos. 3 and 4 held as under:-

“3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

*4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent-State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re:formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. **The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b) (ii) of the NDPS Act.”***

(Emphasis added)

1 Hussainara Khatoon (IV) v. Home Secy., State of Bihar, (1980) 1 SCC 98

2 2023 SCC Online SC 1109

Thus, in the light of decision of the Supreme Court in *Rabi Prakash* (supra) concerning similar provision under the NDPS Act in case of long incarceration rigours of Section 21(4) of the MCOC Act will not apply.

11. There are 25 antecedents against the Applicant, registered with Police Stations from District-Nashik, Tulinj Police Station, Nalasopara Police Station and Manikpur Police Station, Vasai and he has been released on bail in all those cases. As noted hereinabove, he has been released on bail in this case also, however after application of provisions of MCOC Act he was again arrested.

12. Mr. Nadar, learned Counsel for the Applicant states that the Applicant is a resident of 346, Near Gausiya Masjid, Azad Nagar, Shanti Nagar, Bhiwandi, Maharashtra – 421302 and that the Applicant will not enter Nashik and Palghar districts.

13. The Applicant does not appear to be at risk of flight.

14. Accordingly, the Applicant can be enlarged on bail by imposing stringent conditions.

15. In view thereof, the following order:-

ORDER

- (a) The Applicant - Akhtar Rafique Shaikh *alias* Akhtar Irfan Shaikh be released on bail in connection with C.R. No.1121 of 2018 registered with the Tulinj Police Station, District - Palghar on his furnishing PR. Bond of Rs.25,000/- with one or two local solvent sureties in the like amount.
- (b) The Applicant shall not enter the Nashik district as well as Palghar District after being released on bail, except for reporting to the Investigating Officer, if called, and for attending the trial.
- (c) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated,

in case of any change thereto.

- (d) The Applicant shall report to the Bhiwandi Police Station, District – Thane twice every week, on Sunday and Thursday between 11:00 a.m. and 1:00 p.m. for a period of one year and thereafter once every week i.e. on Sunday between 11:00 a.m. and 1:00 p.m. till the conclusion of the trial. The Police Inspector of Bhiwandi Police Station, District – Thane to communicate details thereof to the Investigating Officer.
- (e) 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 such a person from disclosing the facts to the Court or to any Police personnel.
- (f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.

(g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.

(h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

16. The Bail Application is disposed of accordingly.

17. It is clarified that the Trial Court shall decide the case on its merits, uninfluenced by the *prima facie* observations made in this order.

[MADHAV J. JAMDAR, J.]