Santosh

SANTOSH SUBHASH KULKARNI

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 188 OF 2024

Aakash Bhaskar Shetty ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Rajendra Rathod, a/w Shabana Shah, Sohail Ahmed, Umar Dalvi, Mujtaba Shaikh, Dhruv Jain, Zeeshan Sardar, Abdullah Maknojia, Meenaz Moazawala, Aamir Koradia and Sameer Merchant, for the Applicant.
Mr. A. A. Naik, for the State.
PSI Shri. Dhotre, A. E. Cell, DCB, CID, Mumbai.

CORAM: N. J. JAMADAR, J.
DATED: 2nd JULY, 2024

ORDER:-

1. Heard the learned Counsel for the parties.

2. The applicant, who is arraigned in MCOC Special Case No.7 of 2019 arising out of C.R. No.42 of 2019 registered with Goregaon Police Station, Mumbai, (subsequently transferred to DCB CID as CR No.2 of 2019) for an offence punishable under Section 387 read with 34 of the Indian Penal Code, 1860 and Sections 3(1)(ii), 3(2) and 3(4) of The Maharashtra Control of Organised Crime Act, 1999 ("the MCOC Act") has preferred this application to enlarge him on bail.

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 co-accused, William Rodrigues are the members of the said organized crime syndicate. The 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 26th November 2018 to 18th 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 William Rodrigues, being members of the organized crime syndicate, had furnished 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. At the outset, the learned Counsel for the applicant invited the attention of the Court to an order dated 28th February, 2024, whereby William Rodrigues (A1) came to be enlarged on bail. It was submitted that there is not much qualitative difference between the role attributed to the applicant and co-accused William Rodrigues (A1), who has been enlarged on bail.

7. It was further submitted that the applicant has been in custody since 22nd January, 2019. The prosecution proposes to examine 30 witnesses. Till date only eight witnesses have been examined. Out of them, two witnesses have been recalled. Since March, 2024, there has not been any substantial progress in trial, though the time stipulated by this Court for conclusion of the trial has expired.

8. As against this, the learned APP strenuously submitted that there is a material difference in the role attributed to the applicant and the co-accused William (A1) who has been released on bail. Thus, the claim for parity is not at all sustainable. The applicant had collected the mobile phone numbers of the victims and his family members and forwarded the same to the gang leader. The learned APP further submitted that the complicity of the applicant is borne out by the statement of 'X' and the confessional statement of William (A1) recorded under Section 18 of the MCOC Act. Therefore, as the trial has already commenced and eight witnesses have been examined, the Court may expedite the conclusion of the trial instead of enlarging the applicant on bail, at this stage, submitted the learned APP.

9. At the outset, it may be apposite to note that the material pressed into service against the applicant and the co-accused William (A1), by and large, appears to be similar, though a higher degree of complicity is attributable to the applicant. The reasons which weighed with this Court in releasing William (A1) on bail, thus, deserves to be noted as the aspect of parity cannot be totally foreclosed. The observations in paragraphs 8 to 17 of the said order read as under

> "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.
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> 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
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> 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.
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> 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.
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> 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."

10. *Prima facie,* the ground that witness 'X' came to be examined as PW2 in Special Case No.7 of 2019 and he declined to subscribe to the prosecution version applies with equal force to the claim of the applicant for bail. The fact that the said witness declined to subscribe to the prosecution version, makes out a very strong *prima facie* case in favour of the applicant. If the statement of 'X' cannot be relied upon, the other circumstance which can be pressed into service against the applicant consists of the confessional statement of the co-accused.

11. In my considered view, the reasons which weighed with this Court in releasing William (A1) on bail, despite such confessional statement, a *fortiori* inure for the benefit of the applicant as well.

12. The prayer for bail on the ground of prolonged incarceration stands on an even better footing. The applicant has been in custody for five and half years. It has been held that in the face of a long period of incarceration without a real prospect of the conclusion of a trial within a reasonable period, even the statutory restrictions in the matter of grant of bail like Section 21(4) of the MCOC Act, 1999 melt down.

13. I am, therefore, impelled to hold that, in the totality of the circumstances, if viewed in the context of the role attributed to the applicant, material sought to be pressed into service against the applicant, the interdict contained in Section 21(4) does not constitute an impediment for exercise discretion in favour of the applicant. The applicant thus deserves to be enlarged on bail.

14. Hence the following order:

: O R D E R :

(i) Application stands allowed.

(ii) The Applicant – Aakash Bhaskar Shetty be released on bail in MCOC Special Case No.7 of 2019 arising out of C.R. No.42 of 2019 registered with Goregaon Police Station, Mumbai, (subsequently transferred to DCB CID CR No.2 of 2019) 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.]