

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2014 OF 2024**

1. Vishu @ Vishwapal Balram Patil		
2. Viddhesh Sudam Patil	...	Applicants
vs.		
The State of Maharashtra	...	Respondent

**WITH
BAIL APPLICATION NO. 500 OF 2024**

Sujit @ Bandy Balaram Mhatre		
	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

**WITH
BAIL APPLICATION NO. 514 OF 2024**

Chiranjiv @ Motu Balaram Mhatre		
	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Vinod V. Kashid a/w. Mr. Sumit Bhoite and Mr. Abdul Shaikh for applicants in BA/2014/2024.

Mr. Ganesh Gole a/w. Mr. Aarif Ali M. Ali for applicants in BA/500/2024 and BA/514/2024.

Mr. D. N. Salvi, Special PP (through video-conferencing) a/w. Mr. Mayur S. Sonavane, APP for respondent-State.

Mr. S. M. Tawade, PSI, Anti-Extortion Cell, Crime Branch, Thane City.

Mr. B. R. Dongre, Investigating Officer, Detection Cell, Thane City.

**CORAM : MANISH PITALE, J.
DATE : 04th SEPTEMBER, 2024**

P.C. :

. These three bail applications concern FIR No.I-61 of 2017 dated 15.02.2017 registered at Police Station Narpoli Bhiwandi, District Thane for offences under Sections 302, 143, 146, 147, 148 and 149 read with Section 120-B of the Indian Penal Code, 1860 (IPC); Sections 3, 25(1B)(a), 27(2), 4 and 27 of the Arms Act, 1959; Sections 37(1) and 135 of the Maharashtra Police Act, 1951 and Sections 3(1)(i)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (MCOC Act).

2. In Bail Application No.2014 of 2024, the applicants are accused Nos.5 and 7. Accused No.11 is the applicant in Bail Application No.500 of 2024 and accused No.14 is the applicant in Bail Application No.514 of 2024. There are total 21 accused persons, of whom 12 accused persons have been granted bail.

3. The incident in question is dated 14.02.2017 and as per the informant, who was the driver of the deceased, the accused persons brutally assaulted the victim by means of fire arm and sharp weapons, due to which the victim suffered a number of injuries and succumbed to the same. The police swung into action and conducted the investigation. The accused persons were arrested on various dates in the year 2017 and the applicants before this Court have remained behind bars since then. Upon completion of investigation, the chargesheet was filed. As on today, 3 witnesses have been examined and the Special Public Prosecutor indicated to this Court that the prosecution would be examining 75-80 witnesses in support of its case.

4. Mr. Vinod Kashid, the learned counsel appearing for the applicants in Bail Application No.2014 of 2024 i.e. accused Nos.5 and 7, submitted that the said applicants are claiming parity with accused No.8, who was granted bail by the Special Judge (MCOC), Thane (hereinafter referred to as Special Court) by order dated 15.09.2022. It was submitted that while granting bail to the said accused No.8, the Special Court found that FIRs were registered in individual capacity of the accused and not in the capacity of syndicate as a whole, thereby indicating that the accused could not be said to be a member of an organized crime syndicate, as defined in the MCOC Act. On this basis, it was submitted that if individual roles assigned to the applicants in the said application are to be considered, it could be said that they have made a *prima facie* case in their favour.

5. In any case, the learned counsel appearing for the said applicants placed much emphasis on orders passed by this Court in favour of the co-accused persons, granting them bail on the ground of long incarceration and the slow pace of trial. It was submitted that the two applicants in the said application i.e. accused Nos.5 and 7 were arrested on 02.03.2017, thereby showing that they have completed 7½ years behind bars. By placing reliance on the judgments of the Supreme Court in the case of *Union of India vs. K. A. Najeer* [(2021) 3 SCC 713], *Javed Gulam Nabi Shaikh vs. State of Maharashtra and another* (2024 SCC OnLine SC 1693) and *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh* (judgment and order dated 18.07.2024 passed in Criminal Appeal No.2790 of 2024), it was submitted that as a Constitutional Court, this Court can exercise power to release the said applicants on bail, considering the long periods of incarceration suffered by them and there being remote possibility of the trial being completed within a reasonable period of time. It was emphasized that

after the last order passed by this Court in the case of one of the accused persons about 1 year ago, when the trial had just commenced, till date, only 3 witnesses have been examined. Considering the fact that the prosecution intends to examine 75-80 witnesses, the trial will continue at a slow pace, thereby violating the fundamental right of speedy trial of the said applicants, under Article 21 of the Constitution of India. On this basis, it was submitted that this Court may consider allowing the said application.

6. Mr. Ganesh Gole, the learned counsel appearing for the applicants (accused Nos.11 and 14) in Bail Application Nos.500 of 2014 and 514 of 2024 submitted that apart from the contention pertaining to long incarceration and remote possibility of the trial being completed within reasonable period of time as a ground for being released on bail, the said applicants can demonstrate a *prima facie* case in their favour on merits.

7. It was submitted that if the statement of the first informant, his supplementary statement, statement recorded under Section 164 of Criminal Procedure Code, 1973 (Cr.P.C.) and statements of other witnesses claiming to be eye-witnesses recorded during the course of investigation, are to be considered, it becomes obvious that such material is riddled with contradictions. The very presence of the said applicants at the date and time of the incident, is rendered doubtful. It was further submitted that recovery of weapons is also rendered doubtful and the allegation of conspiracy is also not supported by the material on record. It was specifically submitted that even the CCTV footage belied the allegations made against the said applicants. It was further submitted that applicant accused No.11 had not given any confession and the confession of applicant accused No.14 could be of no avail to the prosecution to prove the angle of conspiracy. In order to

support the contention regarding long incarceration, it was highlighted that applicant accused No.11 was arrested on 28.03.2017 and applicant accused No.14 was arrested on 30.03.2017, thereby showing that both the applicants have also undergone about 7½ years of incarceration.

8. On the other hand, Mr. Salvi, the learned Special Public Prosecutor (SPP) submitted that this Court may not go into the question of alleged contradictions and discrepancies in the statements of witnesses and other material on record, at this stage when the trial has already commenced and 3 witnesses are examined. It was submitted that in the present case, serious offences under Section 302 of the IPC and provisions of MCOC Act have been registered. The applicants have no case on merits and some amount of difference in the description of the incident by the witnesses, cannot inure to the benefit of the applicants at this stage, particularly when the presence of the applicants at the spot of the incident is stated by the witnesses. It was submitted that there is enough material to show that the applicants were part of the conspiracy, leading to murder of the victim. On this basis, it was submitted that on merits, the applicants have no case.

9. It was further submitted that perhaps for this reason, the applicants are emphasizing on long periods of incarceration. The trial already having commenced, this Court may not show any indulgence to the applicants, particularly when the applicants are also facing trial in respect of the special statute i.e. MCOC Act, wherein stringent statutory requirements are to be satisfied before granting bail. On this basis, it was submitted that the applications may be dismissed.

10. This Court has considered the rival submissions in the light of the material placed on record, which includes the chargesheet and accompanying material, as also orders passed by the Special Court and this Court while granting bail to the co-accused persons.

11. As regards applicant accused Nos.5 and 7, who have filed Bail Application No.2014 of 2024, parity is claimed with accused No.8, on the ground that although FIRs may have been registered against them in their individual capacity, there is scant material to show that they could be said to be members of organized crime syndicate. But, major emphasis on behalf of the said applicants, was placed on the aspect of long incarceration and the manner in which the trial has been moving at a slow pace before the Sessions Court. Considering the tenor of submissions made on behalf of the said applicants, this Court is considering the prayer made on their behalf on the ground of long incarceration and the position of law laid down by the Supreme Court in its judgment in the case of **Union of India vs. K. A. Najeeb** (*supra*) and other such judgments.

12. In that light, it would be appropriate to consider the specific contentions on merits raised on behalf of the applicant accused Nos.11 and 14 in Bail Application Nos.500 of 2024 and 514 of 2024. The contention regarding long incarceration is also raised in the said applications and therefore, the said aspect would be dealt with in respect of all the applicants, after considering the applications of applicant accused Nos.11 and 14 on merits. In order to consider the same, this Court is required to consider the statements of the informant and others available on record alongwith other relevant material.

13. The statement of the informant i.e. the driver of the deceased victim shows that the incident took place at about 08:45 p.m. on 14.02.2017. In the said statement leading to registration of FIR, the informant specifically alleged that when the victim got down from the car and was intending to go to his house after the car was parked in the building, the applicant accused No.11 fired upon the victim by means of a gun. In the said statement, it was stated that the applicant accused No.14 was standing near a white-coloured Ritz car on the other side of the road outside the building and the assailants escaped in the said car, after the incident. In the supplementary statement of the first informant recorded on 21.02.2017, while describing the said incident, the informant did name both the accused Nos.11 and 14 as being present at the time of the incident, but significantly in the supplementary statement, it was stated that the co-accused Kunal @ Narlya Sainath Mhatre fired from a gun on the deceased, while applicant No.11 assaulted the victim by means of a sickle. In this supplementary statement, it was explained that earlier the informant had stated that the applicant accused No.11 had fired from the gun, but after the watching the CCTV footage, the informant realized that it was the co-accused Kunal @ Narlya Sainath Mhatre, who had actually fired from the gun. It is relevant to note that in the supplementary statement, specific overt act was not assigned to applicant No.14.

14. In the statement of the informant recorded under Section 164 of Cr.PC. before the Magistrate, the version again changed as it was claimed that at the time of the incident, the applicant accused No.11 and co-accused Kunal @ Narlya Sainath Mhatre, both fired upon the victim from guns. It was stated that the applicant accused No.14 was found to be driving the Ritz car in which the assailants escaped. In this statement, it was also stated that the applicant accused No.5 alongwith the co-accused persons, assaulted the

victim by means of sickle. The said statement recorded before the Magistrate on 22.02.2017 does not ascribe specific role to the applicant accused No.7.

15. At this stage, it would be relevant to note the contents of the statement of the wife of the deceased. She did not actually see the assault, as she was in the building and by the time she came downstairs, she could only see the Ritz car and a motorcycle, which the assailants used to escape from the place of the incident. But, the supplementary statement of the wife of the deceased assumes significance because this pertains to the CCTV footage shown to her and the manner in which she identified and described the assailants. In her supplementary statement, she categorically stated after watching the CCTV footage that the person, who fired upon her deceased husband by means of a gun was co-accused Kunal @ Narlya Sainath Mhatre and then, she has stated that after her husband fell down, assailants came with sickles in their hands, but, they had handkerchiefs tied on their faces. Yet, she specifically stated that the person continuing the assault till the end was co-accused Mayur @ Koko Prakash Mhatre. Thereafter, she identified the co-accused Mahesh Pandit Mhatre as one of the persons assaulting with sickle and co-accused Rajni @ Rajnikant Prakash Mhatre also assaulting by means of sickle. This statement indicates that there were four persons seen in the CCTV footage carrying out the assault. None of the applicants before this Court have been named by the wife of the deceased in her supplementary statement, after watching the CCTV footage.

16. Apart from this, the statement of other witnesses were brought to the notice of this Court, which did not ascribe specific role to the applicants before this Court and some of them did not even name the applicants, while describing the incident.

17. As regards recovery, the investigating authority has claimed that a sickle was recovered at the behest of the applicant accused No.11 and pistol was recovered at the behest of the applicant accused No.14.

18. In that regard, attention of this Court was invited to the statement of the witness Savita Ramesh Kundekar. She claimed that on the date of the incident i.e. on 14.02.2017 at about 10:30 p.m., the co-accused Kunal @ Narlya Sainath Mhatre entered her house and kept something underneath the sofa in the drawing room. When she asked the said co-accused person as to what was kept, he allegedly threatened her and told her that she should not tell anybody. Thereafter, when she checked underneath the sofa, she found a bag containing a gun and sickles with blood stains. This witness has further claimed that on 16.02.2017 at about 11:00 a.m., the said co-accused Kunal @ Narlya Sainath Mhatre and co-accused Rajni @ Rajnikant Prakash Mhatre came to her house, took the aforesaid bag containing the weapons and told her that they would be going towards Shirdi.

19. In this backdrop, there is substance in the contention raised on behalf of accused Nos.11 and 14 that a *prima facie* case is made out in their favour regarding recovery of a sickle and the gun at their behest. It is claimed by the investigating authority that the said weapons were recovered from upon space, but the statement of the said witness Savita Ramesh Kundekar *prima facie* creates a cloud of doubt about such recovery.

20. This Court has considered the aforesaid material, which forms part of the chargesheet, only with a view to find out whether a *prima facie* case is made out by the applicants in their favour. In this context, when the confessional statement of the applicant accused No.14 is perused, it can be

said that even if the said statement is taken into consideration, it does not really bring out the involvement of the accused persons in the “conspiracy” to eliminate the victim. As noted hereinabove, the wife of the deceased identified 4 assailants on the basis of the CCTV footage and none of the applicants before this Court are mentioned therein. In fact, the photographs taken from the CCTV footage are at page Nos.230 to 234, labelling 4 specific accused persons identified by the wife of the deceased, after watching CCTV footage. The applicants have made out a *prima facie* case in their favour.

21. This Court is not in agreement with the learned SPP that since serious offences under the MCOC Act are also registered in the present case, at this stage, the alleged contradictions and discrepancies in the statements of witnesses may not be looked into. This Court has perused the same, for the reason that even under the MCOC Act, as per Section 21(4) thereof, the Court has to consider the material on record to examine as to whether the accused has satisfied the twin test contemplated under the said provision for grant of bail. Unless the material on record is perused and examined on the touchstone of broad probabilities, no finding can be rendered in that regard. Hence, this Court has considered the material on record and the aforesaid *prima facie* findings are rendered in favour of the applicants.

22. This Court is also considering the contention raised on behalf of the applicants on the basis of the long incarceration and the slow pace of the trial, in the light of the law laid down by the Supreme Court in recent pronouncements. In the case of **Union of India vs. K. A. Najeeb** (*supra*), the Supreme Court laid down the law that even in cases involving serious offences under special statutes, Constitutional Courts can exercise their power for releasing undertrial accused persons on bail, if they have suffered

long periods of incarceration and the possibility of the trial being completed within a reasonable period of time, is found to be remote. The said position has been consistently followed by the Supreme Court, including in the aforementioned recent judgment and order dated 18.07.2024 in the case of **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh** (*supra*). In the said judgment, in paragraph No.32, the Supreme Court has observed as follows:

“32. This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, *K. A. Najeeb* (*supra*) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.”

23. This Court has also consistently followed the said position of law in favour of undertrial accused persons, who have suffered long periods of incarceration and the trial proceedings are still languishing.

24. In the present case, after this Court directed expeditious disposal of the trial about one year ago, only 3 witnesses have been examined. The SPP has confirmed the fact that the prosecution intends to examine about 75-80

witnesses. Obviously, the process will take considerable period of time and there is no possibility of the trial being completed within a reasonable period of time.

25. This Court is not going into the allegations and counter-allegations made by the learned counsel for the applicants on the one hand and the learned SPP on the other, about why the trial proceedings are moving at snail's pace. The orders passed by this Court in the context of the co-accused persons have taken into consideration such allegations and counter-allegations. Instead of going into the said aspect of the matter, this Court finds that when all the applicants before this Court in these applications have admittedly suffered incarceration for about 7½ years and the possibility of the trial being completed within reasonable time is remote, as a Constitutional Court, power can be exercised to enlarge the applicants on bail.

26. In view of the above, the applications are allowed in the following terms:

- (i) The applicants viz. Vishu @ Vishwapal Balram Patil, Viddhesh Sudam Patil, Sujit @ Bandyalal Balaram Mhatre and Chiranjiv @ Motu Balaram Mhatre shall be released on bail in connection with FIR No.I-61 of 2017 dated 15.02.2017 registered at Narpoli Bhiwandi Police Station, District Thane, on furnishing P.R. Bonds of ₹ 1,00,000/- each and one or two sureties in the like amount to the satisfaction of the trial Court.
- (ii) The applicants, upon being released on bail, shall report to Narpoli Bhiwandi Police Station on 15th day of each month between 10:00 a.m. and 12:00 noon during the pendency of trial.

- (iii) Upon release, within one week, the applicants shall inform the Investigating Officer as well as the trial court about their contact numbers and residential addresses and update the same in case of any change.
- (iv) The applicants shall not enter the premises where the informant, witnesses and the wife/daughter of the deceased are residing.
- (v) The applicants shall co-operate with the concerned Court in completing the proceedings expeditiously and attend the proceedings before the trial Court on each and every date, unless specifically exempted.
- (vi) The applicants shall not tamper with the evidence of the prosecution in any manner. They shall not undertake any action that may influence the informant, witnesses and other persons concerned with the case.

27. The applicants shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions are violated.

28. It is also clarified that the observations made in this order are limited to the disposal of the present bail applications and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

29. The applications are disposed of.

(MANISH PITALE, J)

Priya Kambli