

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1586 OF 2024

Veejay Purshottam Salvi @ Veejay Tambat ... Applicant
Vs.
State of Maharashtra ... Respondent

Mr. Vineet Dhanda i/b. Mr. Shreyansh Mithare for Applicant.
Mr. Kiran C. Shinde, APP for Respondent-State.
Mr. R. B. Dongre, ACP, Crime Branch, Thane.
Mr. Tawade, PSI, Crime Branch, Thane.

CORAM : MANISH PITALE, J.
DATE : OCTOBER 10, 2024

P.C. :

. Heard Mr. Dhanda, learned counsel for the applicant and Mr. Shinde, learned APP for the respondent-State.

2. The applicant is seeking bail as he was arrested on 19.10.2023 in connection with FIR No.I-196 of 2017 dated 05.10.2017 registered with Kasarwadavli Police Station, Thane for offences under Sections 385 and 387 read with Section 34 of the Indian Penal Code, 1860 (IPC). The name of the applicant did not feature in the FIR. But subsequently, he was arraigned as an accused and upon the competent authority issuing an approval order, offences under the provisions of the Maharashtra Control of Organized Crime Act, 1999 (MCOCA Act) were also added.

3. When the FIR was registered, the allegation against the co-accused Ravi Pujari was that, a phone call was received where the person calling from the other side stated that he was Ravi Pujari and a threat was handed out to the effect that unless an amount of Rs.10 crores was handed over, consequences would follow. This extortion call led to registration of the FIR. Subsequently, on the next day i.e. on 06.10.2017,

co-accused persons i.e. Dinesh Rai and Nitin Rai were allegedly trapped by a team of the investigating authority on a tip off. They were found with weapons and cartridges and upon their statement, the involvement of the applicant allegedly came to the fore.

4. In their statements recorded under Section 27 of the Evidence Act, the said two co-accused persons stated that they and the applicant herein had entered into a conspiracy in connection with the allegations levelled in the FIR and that the applicant had supplied the weapons and the cartridges, which were in their possession when they were apprehended. In that light, the name of the applicant was added as an accused in the present case.

5. Subsequently, a proposal was moved for invoking the provisions of the MCOC Act and upon an approval order being passed, offences under the provisions of the MCOC Act were also added.

6. The applicant is a citizen of Dominican Republic and he used to visit India frequently. It is the case of the applicant that he was not aware about the registration of the offence and he being arraigned as an accused, and upon becoming aware, he himself reached out to the concerned court and the investigating authority to inform them about his travel plans to reach India and to join investigation. The applicant claims that he visited India as his father was unwell. In that context, when the applicant visited India on 19.10.2023, he was arrested and since then, he has remained behind bars.

7. The learned counsel for the applicant submits that in the present case, there is hardly any material against the applicant and in any case, invocation of the provisions of the MCOC Act is wholly misplaced. It is submitted that the only material upon which the investigating authority has relied is in the form of confessional statements of the aforesaid two

co-accused persons i.e. Dinesh Rai and Nitin Rai, statements of two confidential witnesses, admittedly recorded after about seven months of the registration of the FIR, and the memorandum under Section 27 of the Indian Evidence Act, 1872 (Evidence Act) of the applicant himself. It is submitted that such material was also available against the aforesaid accused persons and despite the availability of such material, both the co-accused persons were granted bail, one by the Sessions Court and the other by this Court. It is emphasized that although the said co-accused persons have remained behind bars since 2017, that was not the only ground on which they were granted bail. The contentions were considered on merits and thereafter, relief was granted to the said co-accused persons.

8. It is the case of the applicant that in such circumstances, when charges have not been framed as yet and there is no possibility of the trial even commencing in the foreseeable future, completion of the trial within a reasonable time is not possible. The applicant in such circumstances being kept in judicial custody would serve no purpose. As regards the criminal antecedents of the applicant highlighted in the reply filed on behalf of the respondent-State, it is submitted that in three cases, he has been acquitted and in all the other cases, he has been enlarged on bail. It is submitted that the applicant is ready to abide by conditions that may be imposed by this Court.

9. On the other hand, the learned APP submits that confessional statements under Section 18 of MCOC Act are admissible and the contentions raised on behalf of the applicant in that regard would have to be decided during the course of trial. It is submitted that the role of the applicant is described in detail by the co-accused persons, and therefore, at this stage itself, the applicant cannot claim that he has made out a *prima facie* case in his favour for being enlarged on bail. Much emphasis

is placed on the stringent twin test contemplated under Section 21 of the MCOC Act to impress upon this Court that the lack of merit in the contentions raised on behalf of the applicant, coupled with his criminal antecedents clearly demonstrate that he does not deserve any indulgence from this Court.

10. This Court has considered the rival submissions in the light of the material available on record. It is significant to note that the co-accused persons, with whom the applicant is alleged to have entered into conspiracy, have been granted bail. The Sessions Court granted bail to one of the co-accused persons i.e. Nitin Rai and the other co-accused person i.e. Dinesh Rai was granted bail by this Court (Coram : M. S. Karnik, J.) by an order dated 20.02.2023 passed in Bail Application No.2416 of 2022.

11. The learned APP made an attempt to demonstrate that the period of incarceration suffered by the said co-accused persons was a major factor that contributed in their bail applications being allowed. But, a perusal of the said orders shows that the period of incarceration undergone by the said co-accused persons was only an additional factor taken into consideration by the Sessions Court as well as this Court. The case of the co-accused persons was considered on merits and thereupon findings were rendered to the effect that the MCOC Act being invoked, in this particular case, could be said to be doubtful.

12. This Court has considered the material independently and it is found that other than the present FIR, the applicant is not an accused person with the alleged gang-leader co-accused Ravi Pujari in any other offence. In fact, the FIRs, upon which the learned APP placed much reliance as being the criminal antecedents of the applicant, nowhere show that the gang-leader co-accused Ravi Pujari is also a co-accused in any of the said FIRs. This is a factor specifically taken into consideration

by the Sessions Court as well as this Court, while granting bail to the said co-accused persons i.e. Nitin Rai and Dinesh Rai. The applicant is also entitled to the benefit of the aforesaid factor for demonstrating a *prima facie* case in the facts relevant for the present bail application.

13. The material on record, upon which the learned APP has placed much reliance, includes the memoranda under Section 27 of the co-accused persons Nitin Rai and Dinesh Rai, and also that of the applicant himself. The self-incriminating portions of such statements would obviously not become a stumbling block for the applicant while considering his prayer for bail in the present application. Apart from this, the statements of the two confidential witnesses are also relied upon. It is to be noted that the said two co-accused persons - Dinesh Rai and Nitin Rai had allegedly taken the name of the applicant as soon as they were arrested. But the statements of the aforesaid two witnesses were recorded about seven months after the registration of the FIR. A perusal of the said statements shows that after the aforesaid period of seven months, the witnesses remembered exactly the conversation that they had heard and the reference to the alleged conspiracy hatched by the said two co-accused persons with the applicant.

14. It is in this light, when the confessional statements of the very same co-accused persons are considered, this Court finds that the applicant has made out a *prima facie* case in his favour, particularly when the said two co-accused persons have already been enlarged on bail. The observations made in the orders passed in favour of the said two co-accused persons indicate that the invocation of MCOC Act in the present case appears to be doubtful.

15. In any case, the emphasis placed on the criminal antecedents of the applicant, in itself, cannot be a factor to deny the relief of bail to the applicant. It is to be noted that in similar circumstances, when there were

criminal antecedents of certain accused persons, who had approached the Supreme Court in the case of *Mohamad Iliyas Mohamad Bilal Kapadiya Vs. The State of Gujarat*, **2022 SCC OnLine SC 713**, the Supreme Court proceeded to grant bail to the accused persons, while taking note of the fact that the factors necessary for invoking *pari materia* provisions of the Gujarat Control of Terrorism and Organised Crime Act, 2015 were not found available against the accused in the facts and circumstances of the said case.

16. It is undisputed that even charges are yet to be framed in the present case. The commencement of trial does not appear to be possible in the foreseeable future and completion thereof would take a considerable period of time. In such cases, substantial number of witnesses are examined by the prosecution, thereby indicating that the possibility of the trial being completed within a reasonable period of time is remote. The apprehension expressed by the learned APP that the applicant being an overseas citizen would give rise to the possibility of the applicant not co-operating with the trial or that he may abscond, can be addressed by imposing appropriate stringent conditions.

17. In view of the above, the application is allowed in the following terms:-

- (A) The applicant shall be released on bail in connection with in connection with FIR No.I-196 of 2017 dated 05.10.2017 registered with Kasarwadavli Police Station, Thane, on furnishing P.R. Bond of Rs.1,00,000/- with one or two sureties in the like amount to the satisfaction of the trial Court;
- (B) The applicant shall attend the proceedings before the concerned Court on each and every date, unless exempted for the reasons to be recorded in writing. The applicant shall

cooperate with the trial Court for expeditious disposal of the trial;

- (C) The applicant shall attend office of the Assistant Commissioner of Police (Detection-II), Crime Branch, Thane, on the first Monday of every month between 10:00 a.m. and 12 noon during the pendency of the trial;
- (D) The applicant shall not tamper with the evidence of the prosecution. He shall not influence the informant, witnesses or any other person concerned with the case;
- (E) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of his active mobile number and residential address to the trial Court and update about the same, if there is any change.

18. The learned APP has informed this Court that the applicant has already surrendered his passport. The same shall not be released during the pendency of the trial.

19. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

20. The bail application stands disposed of accordingly.

(MANISH PITALE, J.)