

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 3989 OF 2023

Rohit Gangasagar Verma ... Applicant
Versus
The State of Maharashtra ... Respondent

**WITH
BAIL APPLICATION NO. 1644 OF 2024**

Prakash Manohar Sharma ... Applicant
Versus
The State of Maharashtra ... Respondent

**WITH
BAIL APPLICATION NO. 3323 OF 2023**

Bhonu @ Bhola Rambahadur Chaubey ... Applicant
Versus
The State of Maharashtra ... Respondent

Ms. Anandini Fernandes a/w Mr. Rajat Shukla i/by Krishna Singh
for the Applicant in BA/3989/2023.

Mr. Narayan G. Rokade for the Applicant in BA/1644/2024.

Mr. Gaurav Bhawnani i/by Mr. Khan A. Wahab for the Applicant
in BA/3323/2023.

Mr. Tanveer Khan, APP for Respondent-State in all BAs.

Mr. Vishal Mohite, API, DCB, CID Unit-XII.

**CORAM: MANISH PITALE, J.
DATE : 16th DECEMBER 2024**

P.C. :

. Heard learned counsel for the applicants and learned APP
for the respondent-State.

2. The applicants in these applications are accused Nos.3, 6 and 16, who have approached this Court, seeking bail in rather peculiar circumstances. It is an admitted position that the trial in the present case bearing Sessions Case No. 717 of 2011 has reached the stage of recording of statements under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.) and yet, the learned counsel for the applicants are constrained to press the prayer for grant of bail.

3. The allegation against the accused persons is that they abducted 4 victims, took them to a particular place on a hill and brutally murdered them. Thereafter, the faces of the deceased persons were disfigured in order to destroy the evidence. Eventually, the law caught up with the accused persons and all of them were arrested. Some of the accused persons were released on bail on merits, while a large number of accused persons are still behind bars.

4. The learned counsel for the applicants in the present case, apart from making submissions on the role attributed to each of the 3 accused persons, brought to the notice of this Court the fact that the Court, where the aforesaid trial is pending, itself granted stayed of the trial on 19th August 2023 under Section 10 of the Maharashtra Control of Organised Crime Act, 1999 (MCOCA). This was on the basis of an application moved by some of the co-accused persons, who are also accused persons in a subsequent trial concerning MCOC Special Case No. 576 of 2020. It was

submitted on behalf of the said co-accused persons that, as per the legislative mandate under Section 10 of the MCOCA, the said trial before the MCOC Special Court ought to be given precedence and all other cases, including the trial with which the present applicants are concerned, should be kept in abeyance. The Sessions Court in the present case accepted the said contention raised on behalf of the said co-accused persons and stayed the trial by order dated 19th August 2023.

5. The said order was challenged by the State of Maharashtra by filing Criminal Revision Application No. 335 of 2024. On an earlier occasion, hearing of these applications was adjourned, *inter alia*, in the light of pendency of the said revision application. It is brought to the notice of this Court that by a recent order dated 29th November 2024, the revision application has been disposed of, without interfering with the said order passed by the Sessions Court in the present case on 19th August 2023. Certain further directions have been given to the MCOC Special Court to complete the trial expeditiously in the said case.

6. The learned counsel for the applicants submit that a large number of witnesses are proposed to be examined by the prosecution in MCOC Special Case No. 576 of 2020 and there is every possibility that the said trial would take its own time, due to which the proceedings in the present case, which had reached the stage of recording of statements under Section 313 of the Cr.P.C., will remain stayed and the incarceration of the applicants will

continue for a further period of time. In this context, much emphasis was placed on the dates of arrest of each of the applicants. It was brought to the notice of this Court that accused No.3-Bhonu @ Bhola Rambahadur Chaubey was arrested on 8th June 2011, accused No.10-Rohit Gangasagar Verma was arrested on 1st July 2011 and accused No.16-Prakash Manohar Sharma was arrested on 17th August 2011, thereby indicating that the applicants have suffered incarceration for periods ranging between 13 years and 4 months to 13 years and 6 months. By placing emphasis on the said aspect of the matter, it was submitted that this Court may consider enlarging the applicants on bail, as in these peculiar circumstances, there is hardly any possibility of the trial being completed within a reasonable period of time. Reliance is placed on judgments of the Supreme Court, indicating that Constitutional Courts ought to exercise power in such circumstances to enlarge accused under-trials on bail, recognizing their right to speedy trial as a facet of right to life under Article 21 of the Constitution of India.

7. It was further submitted by the learned counsel for the applicants that reliance placed by the prosecution on order dated 12th September 2023 passed by this Court (Coram: M.S. Karnik, J.) in Bail Application No. 1982 of 2023 (*Vivekanand Sudhir Pise @ Vicky and Rahul Pandurangan Mandri v/s. The State of Maharashtra*) is misplaced. The prosecution has placed reliance on the said order because the fact regarding stay of the trial was taken

into consideration and yet, this Court refused to enlarge the applicants therein on bail. It was submitted that the role of the present applicants can be distinguished from that of the applicants therein, as the two applicants therein along with two other co-accused persons, even according to the prosecution, were the main assailants in the incident in question. It was submitted that therefore, this Court may consider allowing the present applications.

8. On the other hand, the learned APP vehemently opposed the present applications. It was submitted that, considering the stage of the present trial, indicating that it is virtually at the fag end and now only final arguments would remain after the statements under Section 313 of the Cr.P.C. are recorded, this Court may not show any indulgence to the applicants. It was submitted that the material on record sufficiently indicates the involvement of the applicants in the heinous crime in the present case, in which 4 persons were brutally murdered. It is further submitted that, as per the directions issued in the order dated 29th November 2023 passed by this Court in Criminal Revision Application No. 335 of 2024, MCOC Special Case No. 576 fo 2020 would be finally decided in an expeditious manner and therefore, the applicants ought not to be given benefit of the fact that the trial has been stayed in pursuance of the legislative mandate manifested in Section 10 of the MCOCA. It was submitted that since this Court (Coram: M.S. Karnik, J.) in the aforesaid order passed in the case

of *Vivekanand Sudhir Pise @ Vicky and Rahul Pandurangan Mandri*, had refused to grant bail to the co-accused persons, despite taking note of the stage of the trial in the present case and the fact that it had been stayed by the said Court, the present applications may also be dismissed.

9. This Court has considered the rival submissions in the light of the material on record. The stage of the trial being almost at the fag end i.e. for recording of statements under Section 313 of the Cr.P.C., is not denied. It appears that the proceedings before the Sessions Court in the present case, have been pending at the aforesaid stage since March 2023. It is also an admitted position that by order dated 19th August 2023 passed by the Sessions Court, where the trial is pending, further proceedings have been stayed in the light of precedence required to be given to a MCOC trial against some of the accused persons, including accused No.1. The said order has been confirmed by disposal of the Criminal Revision Application No.335 of 2024 by order dated 29th November 2024 passed by this Court (Coram: Milind N. Jadhav, J.).

10. Since the trial in the MCOC case will now have to proceed, having been given precedence, this Court finds on statements made across the bar that charge has been framed in the said case, but the stage is of admission and denial and obviously, the recording of evidence is yet to begin. Considering the fact that, it is a MCOC case, it is not seriously disputed that there are large

number of witnesses proposed to be examined by the prosecution in the said MCOC Special Case No. 576 of 2020.

11. It is also an admitted position that the applicants before this Court in the present case i.e. accused Nos. 3, 10 and 16, have no connection with MCOC Special Case No. 576 of 2020. Accused No.1 and two other co-accused persons are facing prosecution in the said MCOC case. These proceedings are not concerned with the correctness of the order granted by the Sessions Court, staying the trial as per the mandate of Section 10 of the MCOCA, particularly when it has been confirmed by disposal of the aforesaid revision application. A perusal of the said Section 10 of the MCOCA indeed indicates that such a MCOC trial is supposed to be given preference over other cases and the trial of the said accused is to be kept in abeyance.

12. These admitted facts clearly indicate that although, the trial in the present case has reached at advanced stage, there is hardly any possibility of the trial being completed within the foreseeable future. Further progress in the present case would all depend upon the disposal of MCOC Special Case No. 576 of 2020. It is in this backdrop that the position of law clarified by the Supreme Court, as regards the power to be exercised by Constitutional Courts, is to be appreciated and applied.

13. In the case of *Javed Gulam Nabi Shaikh v/s. The State of Maharashtra, 2024 SCC OnLine SC 1693*, the Supreme Court has

reiterated the said position of law by relying upon earlier judgments in the cases of *Hussainara Khatoon & Ors. v/s. State of Bihar, 1981 SCC 81*, *Kadra Pehadiya & Ors. v/s. State of Bihar, 1981 3 SCC 671*, *Union of India v/s. K. A. Najeeb, (2021) 3 SCC 713* and *Satender Kumar Antil v/s. Central Bureau of Investigation and Anr., (2022) 10 SCC 51*. In the aforesaid judgment, the Supreme Court has further clarified that even in cases, where the accused under-trials are facing prosecution under special statutes, wherein the threshold for granting bail is very high, Constitutional Courts ought to exercise their power in favour of accused under-trials, who have suffered long incarceration and there is no possibility of the trial being completed within reasonable period of time. This is recognized as the right of the accused under-trials for speedy trial under Article 21 of the Constitution of India. In the present case, the applicants/ accused under-trials are facing prosecution for IPC offences. They have all suffered long periods of incarceration, ranging from 13 years and 4 months to 13 years and 6 months, and in the circumstances noted hereinabove, there does not appear to be any possibility of trial being completed within a reasonable period of time, despite the fact that the trial in the present case has indeed reached at an advanced stage. Due to the stay of the trial in the light of the mandate under Section 10 of the MCOCA, further progress can take place only after MCOC Special Case No. 576 of 2020 is decided by the concerned Special Court. As noted hereinabove, the stage of the said trial in the MCOC Special Case is that only charge has been framed and the

evidence is yet to be begin. Therefore, this Court, as a Constitutional Court is inclined to exercise its power in favour of the applicants.

14. As regards the heinous nature of the crime, it is clarified by the Supreme Court in the aforementioned judgments that seriousness of the offences faced by the accused under-trials, cannot be a consideration for denying them relief, when it is found that they have already suffered long incarceration and the trial is still pending. Much emphasis was placed by the learned APP on the order dated 12th September 2023 passed by this Court in the case of two co-accused persons i.e. Vivekanand Sudhir Pise @ Vicky and Rahul Pandurangan Mandri, for the reason that the stay of the trial was taken note of and yet, the applications were dismissed. This Court has perused the material on record, particularly the evidence of the approver. There is substance in the contention raised on behalf of the applicants that while the said two co-accused persons, whose applications were dismissed, can be said to have played a major role in the incident in question, the roles attributed to the applicants are distinguishable. This Court finds that while accused No.10-Rohit is alleged to have accompanied the co-accused persons till the time when the victims were allegedly abducted and taken to a temple, the roles of accused Nos.3 and 16 indicate that they accompanied the other co-accused persons, when the victims were taken at the top of a hill and done to death. But, even according to the evidence of the

approver, the actual assault appears to have been carried out by 4 co-accused persons i.e. Uday, Ravi, Vicky and Lalu. In that sense, it can be said that the roles of even accused Nos. 3 and 16 are distinguishable from those of the main assailants, two of whom were denied bail by the aforesaid order dated 12th September 2023.

15. In any case, in the light of the aforesaid admitted position on facts, indicating that the trial in the present case, despite being at an advanced stage, is not likely to be completed within a reasonable period of time, this Court is in favour of allowing the applications. It is to be noted that the three applicants before this Court do not have any criminal antecedents. Therefore, by imposing appropriate conditions, the applications deserve to be allowed.

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

- (a) The applicants shall be released on bail in connection with FIR No. 65 of 2011 of DCB CID Unit-XII (corresponding to FIR No. 129 of Kurar Police Station, pending as Sessions Case No. 717 of 2011, on furnishing P.R. Bond of Rs. 50,000/- each and one or two sureties in the like amount to the satisfaction of the trial Court.
- (b) The applicants shall report to the office of DCB CID

Unit-XII, Mumbai, on the first Monday of every month between 10:00 a.m. and 12:00 noon.

- (c) The applicants shall cooperate with the trial Court for expeditious trial and they shall attend each and every date, unless exempted by the trial Court, for reasons to be recorded in writing.
- (d) The applicants shall not tamper with the evidence of the prosecution and they shall not influence the informant, witnesses or any other person concerned with the case.
- (e) The applicants, upon being released on bail, shall place on record of the trial Court the details of their Contact Number and residential address with updates in case of any change.

17. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicants shall be liable to be cancelled. It is also clarified that the observations made in this order are limited to the disposal of the present bail applications. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

18. The applications are disposed of.

MANISH PITALE, J.