

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2504 OF 2023**

Mohd. Idris @ Siraj Abdul Latif Shaikh	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

**WITH
BAIL APPLICATION NO. 1832 OF 2024**

Sufiyan Asgar Khan	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Shailesh Subhash Kharat for applicant in BA/2504/2023.

Ms. Misbaah Solkar a/w. Ms. Muskaan Memon and Ms. Sejal Jain for applicant in BA/1832/2024.

Mr. Sagar R. Agarkar, APP for respondent-State in both applications.

Ms. S. B. Parihar, PSI, Byculla Police Station, Mumbai.

**CORAM : MANISH PITALE, J.
DATE : 25th NOVEMBER, 2024**

P.C. :

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

2. By these applications, the applicants are seeking bail as they were arrested on 29.05.2019 in connection with FIR No.141 of 2019 dated 29.05.2019, registered at Byculla Police Station, Mumbai, for offences under Sections 397 and 506(2) read with Section 34 of the Indian Penal Code, 1860 and Sections 4 and 25 of the Arms Act, 1959. Subsequently, provisions of Maharashtra Control of Organized Crime Act, 1999 (MCOC Act) were also

invoked and upon filing of charge-sheet, the applicants are facing prosecution additionally for offences under Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act.

3. As regards Sufiyan Asgar Khan (applicant in Bail Application No.1832 of 2024), an earlier bail application bearing No.1926 of 2021 was disposed of as withdrawn by this Court (Coram: M. S. Karnik, J) by order dated 02.01.2023. This Court took note of the fact that the said applicant, at that point in time, was in custody for more than 3½ years. It was recorded that the application stood disposed of as withdrawn with liberty to move a fresh application after 6 months, considering the progress of the trial.

4. As regards Mohd. Idris @ Siraj Abdul Latif Shaikh (applicant in Bail Application No.2504 of 2023), this is the first bail application moved before this Court.

5. The learned counsel for the applicants have sought to demonstrate a case on merits on behalf of the applicants, by referring to the documents on record. It is emphasized that there is delay of 3 days in registration of FIR, which is unexplained and that the material on record does not make out a *prima facie* case against the applicants.

6. As regards criminal antecedents of the applicants, it is brought to the notice of this Court that in some cases, they have been acquitted and some are pending. It is submitted that even invocation of provisions of the MCOC Act in the facts and circumstances of the present case, does not appear to be sustainable. It is also submitted that the applicants have suffered incarceration for a period of about 5 years and 6 months. Only 6 witnesses

have been examined, although charge was framed as far back as on 22.10.2021 and prosecution intends to examine total of 46 witnesses. On this basis, the learned counsel for the applicants are pressing for relief.

7. On the other hand, the learned APP has vehemently opposed the present applications. Much emphasis is placed on the criminal background of the applicants. It is emphasized that large number of criminal antecedents exist and merely because in some cases, the applicants have been acquitted, it cannot be said that they can be released on bail, as it would be risky to allow such persons to be brought back in the society. On merits, it is submitted that contentions raised on behalf of the applicants are a matter for trial. The trial has already commenced and 6 witnesses have been examined. It is submitted that the trial proceedings can be expedited.

8. This Court has considered the rival submissions. The applications deserve to be allowed for the following reasons:

- (a) The incident in question is said to have occurred on 26.05.2019, while the FIR was admittedly registered after 3 days i.e. on 29.05.2019. A perusal of the statement of the informant merely shows that the FIR was eventually registered on 29.05.2019, only after the informant discussed the incident in question with his employer and thereafter, caused the FIR to be registered. Such explanation *prima facie* appears to be tenuous, for the reason that the informant claimed that cash amount of ₹ 50,000/- was forcibly taken away from him by the accused persons, including the applicants. Such an incident, in normal situation, ought to have been brought to the notice of the police at the earliest.
- (b) The aforesaid aspect becomes all the more glaring when the statement of the informant is perused, which led to registration of FIR. According

to the informant, after the accused persons, including the applicants, forcibly entered the taxi in which the informant was carrying the cash and they took away the said cash from him by threatening him of dire consequences, including by use of weapons, the accused persons ran away, as the taxi was stopped in the light of the presence of a police vehicle on the road. If that be so, it is difficult to understand as to why the informant did not raise hue and cry and approach the police then and there, after the accused had allegedly fled from the taxi, upon observing the said police vehicle. *Prima facie*, the delay of 3 days in registration of FIR appears to be inexplicable.

- (c) As regards applicant Mohd. Idris @ Siraj Abdul Latif Shaikh, the record shows that the informant as well the taxi driver failed to identify him in the Test Identification Parade. As regards applicant Sufiyan Asgar Khan, while the informant identified him during the Test Identification Parade, the taxi driver failed to do so.
- (d) Emphasis is placed on CCTV footage which allegedly identifies the accused persons, including the applicants, as having forcibly entered the taxi and then fled away upon seeing the police vehicle. It is relevant to note that the said CCTV footage, during the course of execution of *panchanama* in that context, was neither put to informant, nor the taxi driver. It appears that a police officer had identified the applicants on the basis of the CCTV footage. In such a situation, the applicants have made out a *prima facie* case in their favour about lack of material to directly link them with the incident in question.
- (e) The recovery of cash amount of ₹ 30,000/- from the applicant Mohd. Idris @ Siraj Abdul Latif Shaikh is on the basis of his own statement, upon being taken into custody. It is claimed that the said amount was recovered from his pocket 3 days after the date of incident. This is also

a factor that *prima facie* inures to the benefit of the said applicant.

- (f) The charge in the present case was framed as far back as on 22.10.2021. Thereafter, till date, only 6 witnesses have been examined and the prosecution intends to examine total 46 witnesses. The pace of the trial thus far indicates that there is little possibility of the trial being completed within a reasonable period of time, while the applicants have already undergone incarceration for a period of about 5 years and 6 months.
- (g) The invocation of provisions of the MCOC Act is obviously based on the criminal antecedents of the applicants. But a perusal of the documents on record shows that the applicant Mohd. Idris @ Siraj Abdul Latif Shaikh was acquitted in 4 cases and convicted in 3 cases, in which he was sentenced to suffer imprisonment for periods between 2 to 3 months. 3 cases are still pending against him.
- (h) As regards applicant Sufiyan Asgar Khan, the record shows that he was acquitted in one case, while 3 cases, including the present one, are pending against him.

9. This Court is of the opinion that the applicants having made out a *prima facie* case in their favour and considering the period of incarceration that both of them have suffered, coupled with the status of the trial today, a case is made out for granting bail, despite the twin test contemplated under Section 21(4)(b) of the MCOC Act.

10. This Court has perused the *roznama* annexed to the applications which shows that even if on a few occasions, the proceedings had to be adjourned at the behest of the applicants, by and large, they have co-operated with the trial proceedings, including moving an application for conducting speedy

trial. But, as noted hereinabove, only 6 witnesses could be examined till date, while total 46 witnesses are proposed to be examined.

11. For the aforesaid reasons, this Court is of the opinion that the twin test contemplated under Section 21(4)(b) of the MCOC Act is satisfied in the facts and circumstances of the present case. In any case, in terms of law laid down by the Supreme Court in the case of *Union of India vs. K. A. Najeed* [(2021) 3 SCC 713] and *Javed Gulam Nabi Shaikh vs. State of Maharashtra and another* (2024 SCC OnLine SC 1693), wherein it is held that even in cases where special statutes require a higher threshold to be satisfied by the accused for seeking bail, the Constitutional Courts can exercise power wherein the accused undertrials have undergone substantial periods of incarceration and the chances of the trial being completed within reasonable period of time, are low. For the aforesaid reason also, this Court is inclined to allow the applications.

12. Insofar as the apprehension of the respondent-State that considering the criminal background of the applicants, they may adversely affect the trial, appropriate directions can be issued.

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

- (i) The applicants viz. Mohd. Idris @ Siraj Abdul Latif Shaikh and Sufiyan Asgar Khan shall be released on bail in connection with FIR No.141 of 2019 dated 29.05.2019, registered at Byculla Police Station, Mumbai, on furnishing PR Bonds of ₹ 50,000/- 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 Byculla Police Station, Mumbai on first and third Monday 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 co-operate with the trial Court in completing the proceedings expeditiously and attend the proceedings before the trial Court on each and every date, unless specifically exempted;
- (v) 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.

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

15. 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.

16. The applications are disposed of.

(MANISH PITALE, J)