

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1968 OF 2024

Santosh Jyotiram Talekar ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Rakesh Jadhav, for the Applicant.
Smt. Mahalakshmi Ganapathy, APP for the State.

CORAM: N. J. JAMADAR, J.
DATED: 5th SEPTEMBER, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. This is an application for bail in C. R. No.407 of 2020 registered with Deonar Police Station, Mumbai, for the offences punishable under Sections 307, 451, 452, 380, 324, 323, 504, 427, 143, 144, 147, 148 and 149 of the Indian Penal Code, 1860 ("the Penal Code"), Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime (MCOC) Act, 1999 and Section 37(1)(a) read with Section 135 of the Maharashtra Police Act, 1951
3. The first informant lodged a report with the allegations that on 18th December, 2020 at about 11.30 pm., someone called him from in front of his house. He went down. The person had

a mask on his face. He pointed a knife on the waist of the first informant, and took him towards the road side. Co-accused Avan Chavan and his associates, including Nilesh Pawar , Santosh Talekar, the applicant herein, Jaysing Sherkar and four unknown persons, were present thereat. They formed an unlawful assembly and in prosecution of the common object of the said unlawful assembly they started to assault the first informant. The latter's father, brother and other family members came to his rescue.

4. While the first informant was on his way to home, one of the members of unlawful assembly slapped him. Co-accused Nilesh Pawar allegedly pushed the first informant and he fell down. Thereupon, the members of the unlawful assembly allegedly assaulted him by fist and kick blows. The applicant Santosh alias Buwa Talekar allegedly assaulted the first informant's father on the chest with a knife. The first informant's brother Yashwant was assaulted by co-accused Jaysing Sherkar by means of a knife. When the residents came to the rescue of the first informant and his family members, the assailants fled away brandishing their knives.

5. During the course of investigation it transpired that co-accused Avan Chavan, the applicant and the rest of the accused

were members of an Organized Crime Syndicate. Co-accused Avan Chavan was the gang leader. The provisions contained in MCOC. Act, 1999 were, thus, invoked.

6. The applicant came to be arrested on 19th December 2020. Post completion of investigation, charge-sheet has been lodged on 31st March 2021.

7. Mr. Jadhav, the learned Counsel for the Applicant, submitted that the prosecution has suppressed the genesis of the occurrence. In fact, the applicant was assaulted by the members of the informant party in the very same occurrence. The applicant was allegedly apprehended from the scene of occurrence itself. The applicant was injured in the said occurrence. The applicant lodged the FIR, being C.R. No. 408 of 2020, for the offences punishable under Sections 324, 323, 504, 143, 144, 147, 149 of the Penal Code, 1860. The applicant was medically examined at Seth V. C. Gandhi & M. A. Vora Municipal General Hospital, Rajawadi, Mumbai. Yet, the prosecution has falsely claimed that it was the applicant, who had assaulted the father of the first informant. A false discovery has been attributed to the applicant, when the applicant was allegedly arrested from the scene of occurrence itself.

8. Mr. Jadhav further submitted that even though the

applicant has certain antecedents yet, the period of incarceration of the applicant deserves to be taken into account. The applicant has been in custody since December 2020. Charge has yet not been framed. There is no prospect of expeditious conclusion of the trial. This prolonged incarceration as an under-trial prisoner without a prospect of conclusion of the trial impinges upon the fundamental right of the applicant to have a speedy trial. Therefore, on account of long period of incarceration, the applicant deserves to be enlarged on bail notwithstanding the antecedents of the applicant, urged Mr. Jadhav.

9. To lend support to this submission, Mr. Jadhav placed reliance on a decision of the Supreme Court in the case of *Union of India Vs. K. A. Najeed*¹, wherein the Supreme Court *inter alia*, observed that in the matter of grant of bail, where there are statutory restrictions, at the commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial

1 (2022) 3 SCC 713.

part of the prescribed sentence.

10. In opposition to this, Ms. Ganapathy, the learned APP, strongly opposed prayer for bail. It was submitted that there is overwhelming material to show that the applicant is an active member of the Organized Crime Syndicate led by Avan Chavan, the gang leader. There is a statement of a witness which shows that on the day of occurrence as well as a day preceding thereto, the applicant had called the said witness and warned him not to entrust in the work of house repairs to the father of the informant. There is material to indicate that the applicant, Avan Chavan, the gang leader and other members of the Organized Crime Syndicate, had created a reign of terror in the said locality. Apart from the statements of the first informant and the injured, the role of assault by means of deadly weapons attributed to the applicant, is also borne out from the confessional statement of Samadhan Waghmare, a co-accused, recorded under Section 18 of the MCOC Act, 1999.

11. Ms. Ganapathy further urged that the applicant was the principal assailant. The applicant has assaulted the father of the first informant by means of sharp weapon on the face and chest. Moreover, in the face of the applicant's antecedents, by no stretch of imagination, can it be said that applicant will not

indulge in identical offences if he is released on bail. Since the interdiction contained in Section 21(4) of the MCOC Act, 1999 operates with full rigour, the applicant does not deserve to be enlarged on bail, submitted Ms. Ganapathy.

12. To begin with, as the applicant has been roped in for being a member of Organized Crime Syndicate and having indulged in continuous unlawful activity, it may be necessary to extract the list of cases registered against the applicant, apart from the instant case:

No.	Police Station	C. R. No.	Sections	Status
1	Deonar	190/2011	452, 323, 504, 427, 506, of IPC	Court Pending
2	Deonar	234/2011	326, 504, 34 of IPC	Acquitted
3	Deonar	191/2014	u/s.326, 385, 506(2), 452, 457 of IPC.	Court Pending
4	Deonar	LAC 406/2015	u/s.37(1)R/W.35 of Maharashtra Police Act.	-----
5	Deonar	LAC 426/2015	u/s. 42 of Maharashtra Police Act.	-----
6	Deonar	LAC 416/2015	u/s.37(1)R/W.35 of Maharashtra Police Act.	-----
7	Deonar	27/2016	u/s.324, 504 of IPC	Court Pending
8	Deonar	106/2017	u/s. 324, 323, 504, 506, 34 of IPC	Court Pending
9	Deonar	159/2017	u/s. 354(d) of IPC r/w. 12 of POCSO Act	Convicted
10	Deonar	174/2018	u/s. 363, 376 of IPC Sec. 4, 8 of POCSO	Court Pending

11	Deonar	157/2019	u/s. 307, 385, 395, 397, 504, 506(2) of IPC	Court Pending
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13. It would be contextually relevant to note that Shravan @ Avan Chavan, the gang leader has been arraigned in five crimes and he has been convicted in C.R. No.236 of 2011 registered with Deonar Police Station for the offences punishable under Sections 302, 307, 506(2) read with 34 of the Penal Code, 1860. In few of the crimes, the applicant has been arraigned as co-accused with Sharan @ Avan Chavan, the alleged gang leader. There is an element of commonality.

14. The aforesaid material, *prima facie*, indicates that the applicant has been indulging in continuous unlawful activity in the area falling within the limits of Deonar Police Station. In fact, all the crimes have been registered against the applicant in Deonar Police Station. Affidavit-in-reply indicates that the prohibitory action initiated against the applicant has not had any deterrence on the applicant and the latter has been indulging in criminal activity with an alarming frequency. What exacerbates the situation is the fact that the applicant has been indulging in the offences against the women as well. In CR No.159 of 2017 the applicant has been convicted for the offence punishable under Section 354D and Section 12 of the Protection of Children from Sexual Offences Act, 2012. In another crime,

being CR No.174 of 2018, the applicant has been arraigned for the offences punishable under Section 363 and 376 of the Penal Code and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012. In the face of the aforesaid material, which indicates that in the few of the crimes there is an element of commonality as the applicant has also been arraigned alongwith the co-accused Avan Chavan, the alleged gang leader, it would be rather hazardous, at this stage, to draw an inference that there is no material to show that the applicant has been indulging in continuous unlawful activity.

15. It is true the mere fact that a number of crimes have been registered against an accused may not by itself be determinative of the aspect as to whether the accused is a member of an organized crime syndicate or has been indulging in continuous unlawful activity. It is the nexus of the accused with the organized crime syndicate that is of decisive significance.

16. In the case at hand, apart from the material on record which indicates that the applicant and co-accused Avan Chavan have been indulging in criminal activity, the statement of witnesses especially that of witness No.24, *prima faice*, shows the nexus between the applicant and the organized crime

syndicate. Witness No.24 has stated that after the renovation work of his house was entrusted to the father of the first informant, the applicant called him and apprised him that he was an associate of co-accused Avan Chavan and questioned why the work was entrusted to the father of the first informant. On the following night also, the applicant had visited the house of the said witness at 12.15 am and took him to the place where the co-accused Avan Chavan and others were present. Avan Chavan insisted that the renovation work should be given to him. The first informant and other witnesses have also stated about the involvement of the applicant in the organized crime syndicate.

17. As regards the role of the applicant in the incident in question, *prima facie*, there is material to indicate that the applicant had assaulted the father of the first informant by means of knife. The Medico-Legal Examination Reports indicate that the father of the first informant had sustained an incised wound which was muscle deep. The claim of the father of the first informant that he had sustained an injury on his right hand when he tried to fend off the second blow unleashed by the applicant also finds support in the injury certificate as he had sustained a lacerated wound on right hand near thumb.

Even in the confessional statement of co-accused Samadhan Waghmare recorded under Section 18 of the MCOC Act, 1999, the said role of assault by means of knife has been attributed to the applicant. Thus, I find substance in the submission of the learned APP that *prima facie* there is ample material to show that the applicant was the principal assailant.

18. It is true, there is material on record to indicate that the applicant had also sustained injuries in the very same occurrence. The applicant had lodged an FIR bearing CR No.408 of 2020. The applicant was medically examined at Rajawadi Hospital and two injuries were noted on the back of the applicant by means of a sharp weapon. Those injuries were designated as simple.

19. In a situation of this nature, where two reports have been lodged in respect of one and the same occurrence, the question as to which of the party was aggressor and whether the offences were committed in self-defence, may warrant consideration. Two cross FIRs are essentially two versions in respect of one and the same occurrence. In a normal case, the aforesaid factor of injuries having been found on the person of the applicant would have weighed with the Court in exercising the discretion in favour of the applicant. However, in the peculiar facts of the

case, the nature of the accusation against the applicant and his antecedents dissuade the Court from exercising such discretion. Firstly, the applicant is stated to be the principal assailant. Secondly, the applicant has been indulging in continuous unlawful activity as is evident from the crimes registered against him. *Prima facie*, there is material to indicate that the alleged offences were committed in order to have pecuniary advantage and assert the supremacy of the organized crime syndicate.

20. *Prima facie* it would be difficult to draw an inference that the applicant may not be guilty of the offences for which he has been arraigned in this case. More importantly, in the backdrop of the applicant's antecedents, the Court cannot have an assurance that the applicant will not indulge in identical offences, if enlarged on bail. Therefore, the twin conditions envisaged by Section 21(4) of the MCOC Act, 1999 cannot be said to have been fulfilled.

21. It is true the applicant has been incarcerated since 18th December, 2020. It is also true that in the event of a long period of incarceration, without a real prospect of expeditious conclusion of trial, the statutory restrictions in the matter of grant of bail melt down. Nonetheless, in the totality of the circumstances of the case, the role attributed to the applicant

and especially, the applicant's antecedents, render it rather difficult to exercise the discretion in favour of the applicant. Having regard to the period of incarceration, however, the learned Special Judge can be requested to commence and conclude the trial expeditiously.

22. Hence, the following order:

: O R D E R :

- (i)** Application stands rejected.
- (ii)** The learned Special Judge, who is seized with Special Case No.431 of 2021 arising out of C. R. No.407 of 2020 registered with Deonar Police Station, Mumbai, is requested to make an endeavour to commence and conclude the trial as expeditiously as possible.
- (iii)** 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 co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed

[N. J. JAMADAR, J.]