



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

BAIL APPLICATION NO.2543 OF 2024

Mukhtar Ahmed Vasiullah Shaikh ... Applicant

versus

The State of Maharashtra ... Respondent

**WITH
BAIL APPLICATION NO.4373 OF 2024**

Mujeeb Rehman Gulam Rasool Khan @
Muzebur ... Applicant

versus

The State of Maharashtra ... Respondent

Mr. Shyamrishi Pathak with Ms. Gayatri P., for Applicant in BA No.2543 of 2024.

Mr. Zoheb Shaikh, for Applicant in BA No.4373 of 2024.

Mr. H.J.Dedhia, APP for State in BA No.2543 of 2024.

Mr. A.A.Naik, APP for State in BA No.4373 of 2024.

CORAM: N.J.JAMADAR, J.

**RESERVED ON : 26 NOVEMBER 2024
PRONOUNCED ON : 5 DECEMBER 2024**

ORDER :

1. The applicants, who are arraigned in Special Case No.34 of 2021 arising out of C.R.No.481 of 2020 registered with Shivaji Nagar Police Station for the offences punishable under Sections 307, 341, 506(2), 141, 143, 144, 148 and 149 of the Indian Penal Code and Sections 4, 25 and 27 of the Arms

Act, 1959, Section 37(1)(a) read with Section 135 of the Maharashtra Police Act, 1951, and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (MCOC Act, 1999), have preferred these application to enlarge them on bail.

2. Rajan Bala Rathod, the injured, and the applicants reside in Baingainwadi area. Mukhtar Ahmed (A1) – applicant in BA No.2543 of 2024 is the leader of an organized crime syndicate. Mujeeb Rehman (A4) – Applicant in BA No.4373 of 2024 is a member of the said organized crime syndicate. They have created a reign of terror in the said locality.

3. On 3 September 2020, there was a quarrel between the family members of the injured and Mukhtar Ahmed (A1) and Mujeeb Rehman (A4). The matter was reported to police. The applicants, thus, had a grudge against the injured and his family members.

4. On 16 September 2020, the applicants and co-accused accosted the injured. The applicants and the co-accused were allegedly armed with swords. The applicants unleashed blows by means of sword on the head of the injured. The injured sustained grievous injuries and fell down. The applicants threatened the persons who tried to come to the rescue of the injured. The mother and wife of the injured came thereat. Thereupon, the applicants and co-accused fled away threatening them and other persons with dire consequences.

5. The investigation commenced. The applicants were apprehended. The provisions contained in MCOC Act, 1999 were invoked. Post sanction, the learned Special Judge has taken cognizance of the offences punishable under MCOC Act, 1999.

6. The applicant Mukhtar Ahmed (A1) had preferred BA No.3417 of 2021 along with co-accused Rizwan Shaikh. However, by an order dated 19 August 2023, the application was dismissed as withdrawn qua the applicant Mukhtar Ahmed (A1). Co-accused Rizwan was, however, released on bail.

7. The applicant – Mukhtar Ahmed (A1) has again approached this Court for bail, asserting that, in the intervening period, another co-accused Alfaraz Khan has been released on bail by this Court by an order dated 6 March 2024 and there has been no substantial progress in the trial, though the applicant has been in custody for more than four years.

8. Mujeeb Rehman (A4) – Applicant in BA No.4373 of 2024 also seeks bail on the ground of long period of incarceration and absence of material to substantiate the prosecution version.

9. Mujeeb Rehman (A4) had also preferred BA No.986 of 2023. The said application was also dismissed as withdrawn. However, having regard to the period of incarceration, the learned Special Judge was requested to conclude the trial as expeditiously as possible preferably within a period of six months from the date of communication of the said order. Liberty was granted to the

applicant to revive the prayer for bail in the event the trial is not concluded within the said period. Availing the said liberty, Mujeeb Rehman (A4) has preferred this application.

10. I have heard Mr. Pathak, learned Counsel for the Applicant in BA No.2543 of 2024, Mr. Dedhia, learned APP for State in BA No.2543 of 2024, Mr. Zoheb Shaikh, learned Counsel for the Applicant in BA No.4373 of 2024 and Mr. Naik, learned APP for State in BA No.4373 of 2024. With the assistance of the learned Counsel for the parties, I have perused the material on record.

11. At the outset, Mr. Pathak, learned Counsel for the Applicant submitted that the fact that the first application was dismissed as withdrawn does not preclude the applicant from seeking bail afresh. Reliance was sought to be placed on the decision of the Supreme Court in the case of **Babu Singh and Ors. V/s. The State of U.P.**¹

12. Mr. Pathak urged that, first, there is an irreconcilable inconsistency in the ocular account of the injured and the medical evidence. No injury was found on the head of the injured, though the injured and the alleged eye witnesses have deposed that the injured was assaulted by means of sword on the head. In this context, reliance was placed by Mr. Pathak on the decision in the case of **Mani Ram and ors. V/s. State of U.P.**² wherein it was

1 (1978) 1 SCC 579

2 1994 Cri.L.J. 3848

enunciated that if the evidence of the prosecution witnesses is totally inconsistent with the medical evidence it is a most fundamental defect in the prosecution case and unless this inconsistency is reasonably explained it is sufficient not only to discredit the evidence but the entire case.

13. Secondly, there is material infirmity in invoking the provisions contained in MCOC Act, 1999. The sanctioning authority proceeded to grant sanction to invoke the provisions of MCOC Act, 1999 on the premise that the offences were committed by the organized crime syndicate for “other advantage”, though the proposal was submitted on the ground that the offences were allegedly committed by the organized crime syndicate for “pecuniary advantage”. Thirdly, the accused have been in custody for more than four years. 12 Witnesses have been examined till date. The prosecution proposes to examine 41 witnesses. It is extremely unlikely that the trial can be concluded within a reasonable period. Thus, the accused deserves to be enlarged on bail.

14. Mr. Zoheb Shaikh, learned Counsel for the Applicant - Mujeeb Rehman (A4), supplemented the submissions of Mr. Pathak. It was submitted that out of 12 witnesses examined by the prosecution, as many as 9 have not supported the prosecution case. The prosecution proposes to examine at least 14 more witnesses. The Applicant is in custody since 2021. Therefore, the applicant deserves to be released on bail.

15. Mr. Dedhia and Mr. Naik, learned APPs, resisted the prayer of the respective applicant for bail. Mr. Dedhia submitted that the Applicant - Mukhtar Ahmed (A1) is the history sheeter. As many as 15 cases have been registered against the applicant. Thus, the interdict contained in Section 21(4) of the Act, 1999 is clearly attracted qua the applicant Mukhtar Ahmed (A1).

16. Mr. Naik, learned APP, while resisting the prayer for bail of Mujeeb Rehman (A4), placed reliance on the statement of witness No.17 which indicates that the applicant had assaulted the injured by means of sword on the left shoulder and back. As there is direct evidence against the applicant, he does not deserve bail, submitted Mr. Naik.

17. To begin with the nature of the injuries suffered by the injured. The injury certificate issued by LTMG Hospital, Sion, indicates that the injured has sustained two CLWs, one on left leg and another one on the left shoulder and both the injuries were designated simple. In addition, the deceased had sustained left arm humerus shaft fracture and fracture of tibia fibula of right leg. The Medical Officer had designated the latter two injuries grievous.

18. It is imperative to note that the prosecution case is that the applicants and the co-accused had unleashed blows by means of sword on the head of the injured. Rajan Rathod (P.W.1) injured, has deposed that the applicants assaulted him by means of sword on his head. Co-accused Papa assaulted

him on his left leg by means of stone. Rijju lifted that stone and assaulted him on his right hand.

19. Prima facie, the medical evidence does not lend support to the version of the injured as regards the injuries by means of sword on the head of the injured. Two of the injuries namely left arm humerus shaft fracture and fracture of tibia fibula of right leg are, prima facie, attributable to assault by means of stone by the co-accused Papa and Rijju. Those two injuries have been designated as grievous. Whereas, the CLWs on the left shoulder and left leg, have been designated as simple.

20. At this stage, it is trite, meticulous evaluation of the evidence, especially when the trial is underway, is totally unwarranted. Yet, prima facie, it appears that the injury certificate does not support the claim of the prosecution that the injured was assaulted by means of sword on the head.

21. The aforesaid nature of the injuries sustained by the injured assumes significance if considered in the light of the period of incarceration of the applicants. As noted above, the prosecution has examined 12 witnesses. Learned APP submitted that the prosecution proposes to examine 14 more witnesses. Mukhtar Ahmed (A1) has been in custody for more than four years and Mujeeb Rehman (A4) has been in custody for more than three years. By a catena of decisions, it has been enunciated that the statutory restrictions in the matter of grant of bail, like the one under Section 21(4) of the Act, 1999,

melt down in the face of long period of incarceration. It is true, the trial has commenced. However, having regard to the pace of the trial, it is extremely unlikely that the trial can be concluded within a reasonable period.

22. It is also contextually relevant to note that the evidence of the injured, his mother and wife has already been recorded. Thus, the apprehension of tampering with evidence and threatening the injured and his family members may not survive. It is true, the antecedents of the applicant Mukhtar Ahmed (A1) put the Court on guard. Yet, the nature of the material pressed into service in the case at hand, especially in the context of the nature of the injuries sustained by the injured and the role attributed to the applicant and the period of incarceration outweigh the non-availability of the assurance that the applicant Mukhtar Ahmed (A1) may not indulge in identical offences if released on bail. The said aspect can be taken care of by imposing stringent conditions.

23. Hence, the following order :

ORDER

- (i) The Applications stand allowed.
- (ii) The Applicants – Mukhtar Ahmed Vasiullah Shaikh and Mujeeb Rehman Gulam Rasool Khan @ Muzebur be released on bail in C.R.No.481 of 2020 registered with Shivaji Nagar Police Station on furnishing a PR bond in the sum of Rs.50,000/- each, and one or two sureties in the like amount to

the satisfaction of the trial Court.

(iii) The applicants shall not enter the limits of Shivaji Nagar Police Station, Govandi, Mumbai till the conclusion of the trial.

(iv) The applicants shall mark their presence at Mulund Police Station on first Monday of every month between 11 am to 1 pm for a period of three years or till the conclusion of the trial, whichever is earlier.

(iv) The applicants shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer. The applicants shall not contact the injured, any of his family members and any witnesses in any manner and for any purpose whatsoever.

(v) On being released on bail, the applicants shall furnish their contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vi) The applicants shall regularly attend the proceedings before the jurisdictional Court.

(vii) 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 applicants and the co-accused, the trial

Court shall not be influenced by any of the observations made hereinabove.

Applications disposed.

(N.J.JAMADAR, J.)