



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.1001 OF 2023

(Lakhan @ Lucky s/o Dilip @ Dipak Wadhve Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. R.M. Daga, Advocate for the applicant.
Mr. A.G. Mate, APP for the non-applicant/State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JANUARY 15, 2024

By this application, the applicant is seeking bail in connection with Crime No.1306/2018 registered with Police Station, Jaripatka, Nagpur for the offences punishable under Sections 302, 324, 114 read with Section 34 of the Indian Penal Code, Sections 4 and 25 of the Arms Act, 1959 and Section 135 of the Bombay Police Act, 1951.

2. The applicant came to be arrested on 18/11/2018 and since then he is behind bar.

3. Learned Counsel for the applicant submitted that the applicant is arrested on the basis of report lodged by one Sudhir Gajbhiye who alleged that prior to 15 days of the incident the dispute took place between the present applicant and co-accused persons with the deceased Sandip @ Kalu Gajbhiye. On 14/11/2018 at about 4:45 p.m. informant Sudhir received information that someone is assaulting the deceased on the ground near Lalit

Kalabhawan. He immediately rushed to the spot and found that his brother Sandip is lying on the ground and the accused along with the present applicant were assaulting him by the sharp weapon. After the incident, the present applicant and other co-accused fled away from the spot of incident.

4. Learned Counsel for the applicant submitted that the incarceration of the present applicant is for more than 5 years and 2 months in the said crime. The accused Nos.3 and 4 namely Rishikesh @ Shambhu Ramesh Gowardhan and Tanmay @ Popo Raju Jadhav who have released on bail have committed the offence under Section 307 of the Indian Penal Code. Considering their involvement in the continuous criminal activities, the provisions of MCOC Act is made applicable against the accused Nos.3 and 4 and the charge-sheet is filed. In view of the provisions under Section 10 of the Maharashtra Control of Organised Crime Act, 1999 (for short 'MCOC Act'), the trial of the present applicant is kept in abeyance for indefinite period. Now the material witnesses i.e. the informant and other eye-witness namely Samit @ Bittu Duryodhan Tembhurne are already examined by the trial Court. Some of the witnesses have not supported the prosecution case and left the loyalty towards the prosecution. Thus, the apprehension that if the present applicant is released on bail will tamper the prosecution is also meaningless as their evidence is already recorded. He fairly submitted that as far as the allegation regarding the

assault by the present applicant by means of sharp weapon is there but considering the fact that the applicant is behind bar since long and now the trial is kept abeyance for indefinite period. In view of that, it is uncertain that when the trial will be concluded against the present applicant, in the above circumstances, the applicant deserves to be released on bail.

5. In support of his contention he placed reliance on ***Union of India Vs. K.A. Najeeb [2021 ALL MR (Cri) 1587 (S.C.)]*** wherein the applicant was behind bar for 4 years and was charged for the offences under the Unlawful Activities (Prevention) Act, 1967 through National Investigation Agency wherein the Honourable Apex Court has considered that the High Court has released the applicant on bail by observing that we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of the Constitution have been well protected. He

further placed reliance on the order passed by this Court in ***Criminal Bail Application No.1779 of 2023*** (*Akash Satish Chandalia Vs. The State of Maharashtra*) dated 26/09/2023 wherein by referring the judgment of *Union of India Vs. K.A. Najeeb* (supra) this Court has released the accused on bail. He submitted that in view of the above decisions and in the circumstances that the applicant is behind bar since 5 years and 2 months, the material witnesses are already examined by the prosecution and now the trial is kept in abeyance for indefinite period, it is a fit case wherein the discretion is to be used by releasing the present applicant on bail.

6. *Per contra*, learned Additional Public Prosecutor strongly opposed the application on the ground that the allegation against the present applicant is of a serious nature. The role of the present applicant is narrated by the eye-witnesses. If the applicant is released on bail there is every possibility of his fleeing away and tampering of the witnesses. Moreover, the nature of the offence is of a serious and the role attributed to the present applicant is also a specific role. In the said circumstances, the application deserves to be rejected.

7. Having heard learned Counsel for the parties. Perused the investigation papers. There is no dispute as to the fact that the applicant is implicated in the alleged offence on an allegation that he has assaulted the deceased by means of sharp weapon and caused his death.

The statements of the eye-witnesses and the evidence recorded before the Court also shows the involvement of the present applicant in the alleged offence. There is also no dispute as to the fact that the applicant is behind bar since the date of his arrest i.e. from 18/11/2018 i.e. for more than 5 years and 2 months. The co-accused Nos.3 and 4 namely Rishikesh @ Shambhu Ramesh Gowardhan and Tanmay @ Popo Raju Jadhav who were released on bail have committed the offence punishable under Section 307 of the Indian Penal Code and considering the continuous illegal activities committed by them by seeking the approval under Section 23(1) and 23(2) of the MCOC Act. The charge-sheet is filed against them. In view of Section 10 of the MCOC Act which states that the trial of any offence under this Act by a Special Court shall have precedence over the trial of any other case against the accused in any other Court (not being a Special Court) and shall be concluded in preference of the trial of such other case and accordingly the trial of such other cases shall remain in abeyance, the present trial of the applicant is kept in abeyance. Admittedly, there is no progress in the trial as only charge-sheet is filed under the MCOC Act, therefore, in view of Section 10 of the MCOC Act, the trial of the present applicant is kept in abeyance for indefinite period.

8. Learned Counsel for the applicant placed reliance on the decision of the Honourable Apex Court in

the case of Union of India Vs. K.A. Najeeb (supra) wherein in para No.18 it is observed as under :

“18. It is thus clear to us that the presence of statutory restrictions like Section 43–D (5) of UAPA per–se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at 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 part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43–D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

9. There is no dispute as to the fact of the seriousness of the offence and the nature which deserves a consideration while exercising the discretion to release an accused on bail. Admittedly, while exercising the discretion the consideration for grant of bail which Court has to take into consideration are, the nature and gravity of the offence, the possibility of the applicant fleeing away from justice, tampering of the witnesses etc. but at the same time, the factor of incarceration for indefinite period of an applicant as an under trial prisoner also deserves to

be taken into consideration. Pending the trial, a person cannot be kept in custody for an indefinite period of time and it clearly violate the fundamental right enshrined in the Constitution and time and again, has been considered to be a justiciable ground to exercise the discretion to release an accused. The judgement of the Honourable Apex Court is placed before me which also laid down the same principle and the release of the accused on the ground of long incarceration and the impossibility of the conclusion of the trial in a near future is considered by the Honourable Apex Court. In the present case, as the another charge-sheet is filed against the co-accused, the trial of the present applicant is kept in abeyance and that is for indefinite period i.e. till the disposal of the trial under the provisions of the MCOC Act. Admittedly, present applicant is not the accused in the trial under the provisions of MCOC Act. He is kept behind bar as the other co-accused are facing the trial under the provisions of the Special Act. Admittedly, in the present case, the material witnesses are already examined including the informant and eye-witnesses. Some witnesses have not supported the prosecution case, but two eye-witnesses are already examined who have supported the prosecution case, therefore, the apprehension raised by the learned Additional Public Prosecutor regarding tampering of the witnesses has also not existence as their evidence is already recorded in the trial. It is well settled that deprivation of a personal liberty without ensuring the

speedy trial is not in consonance with the Article 21 of the Constitution of India, access to justice and speedy trial has been well recognised as a hall mark of liberty guaranteed in the Constitution and when timely trial is not possible the accused cannot be made to suffer further incarceration is he has already undergone significant period of the proposed sentence and in such circumstances, the discretion can be used in favour of the accused. In the above set of circumstances, the application of the applicant deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant - Lakhan @ Lucky s/o Dilip @ Dipak Wadhve in connection with Crime No.1306/2018 registered with Police Station, Jaripatka, Nagpur for the offences punishable under Sections 302, 324, 114 read with Section 34 of the Indian Penal Code, Sections 4 and 25 of the Arms Act, 1959 and Section 135 of the Bombay Police Act, 1951, be released on bail on furnishing P.R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the trial on a regular basis and shall not apply for the exemption in any circumstances.

(iv) The applicant shall attend the Jaripatka, Nagpur police station once in a week i.e. on every Sunday between 10.00 a.m. and 1.00 p.m. and the concerned Police Officer of the said police station shall record his presence.

(v) The applicant shall furnish names and addresses of his two relatives along with their address proof and shall produce the same before the trial Court.

(vi) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case and shall not in any manner involve and tampering of the evidence and in any criminal activities.

10. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)