Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1682 OF 2024

Sarfaraj Salim Shaikh … Applicant
V/s.
State of Maharashtra … Respondent

Mr. Vivek Arote a/w Mr.Akshay Dingale, for the applicant.

Ms. Pallavi N. Dabholkar, APP for the State – respondent.

Ms. Renuka Bille, ACP, L.T. Marg Police Station.

CORAM : AMIT BORKAR, J.

DATED : JUNE 18, 2025

P.C.:

1. The present application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail in connection with Crime Register No. 211 of 2023 registered at L.T. Marg Police Station, Mumbai. The applicant is facing prosecution for offences punishable under Sections 395 (dacoity) and 120-B (criminal conspiracy) of the Indian Penal Code, 1860. In addition to the offences under the IPC, the provisions of the Maharashtra Control of Organised Crime Act, 1999 (for short, "MCOCA") namely Sections 3(1)(ii), 3(2) and 3(4), have also been invoked against the applicant.

2. The case of the prosecution, in brief, is that the informant's father is engaged in the business of jewellery and for that purpose, they frequently visit Zaveri Bazar for purchasing and preparing ornaments. On 27th March 2023, at around 5:30 p.m., the informant had gone to Zaveri Bazar with an amount of ₹1,70,000/- in cash. While he was proceeding from Khau Galli to Khara Kuwa to meet his father, who was waiting for him nearby, two unknown persons pushed him and two others forcibly snatched the cash bag from him and fled from the spot. Based on this incident, an FIR came to be registered initially under Section 392 read with 34 of the IPC. During the course of investigation, the police alleged that the persons involved in the offence are part of an organised crime syndicate, and therefore invoked the provisions of MCOCA, after obtaining prior approval as required under Section 23 of the Act. The applicant came to be arrested on 1st April 2023. After filing of the charge-sheet, the applicant moved the learned Sessions Court seeking bail, but his application was rejected. He has now approached this Court for similar relief.

3. The learned counsel appearing for the applicant submitted that the role attributed to the applicant is of a comparatively minor nature. It is submitted that the applicant was merely keeping watch near the scene of offence, and did not participate in the actual act of snatching the cash bag. He further submitted that the applicant has been falsely roped into the offence. He pointed out that only ₹20,000/- was allegedly recovered from an open public place and not directly from the applicant. He also referred to the CCTV footage to submit that even though the applicant was present at the spot, there is no direct evidence of his involvement in the actual dacoity. It is argued that considering the peripheral role of the applicant, his prolonged incarceration without substantial progress in trial, and the limitations under Section 21 of MCOCA notwithstanding, he deserves to be enlarged on bail.

4. On the other hand, the learned Additional Public Prosecutor strongly opposed the application. She submitted that there is sufficient prima facie evidence to show the applicant's active involvement. She pointed out that the Call Detail Record (CDR) analysis shows that the applicant was in continuous contact with the gang leader both before and after the incident. It is further submitted that the applicant has criminal antecedents and that he has been previously charge-sheeted along with the same gang leader, which shows a pattern of continued participation in organised crime, a pre-requisite for invoking the provisions of MCOCA. The learned APP also relied upon the confessional statement of the co-accused recorded under Section 18 of MCOCA, which, according to the prosecution, supports the applicant's involvement. She thus submitted that in view of the statutory bar under Section 21(4) of MCOCA, and the nature of material available, the application does not merit consideration and deserves to be rejected.

5. I have carefully considered the submissions advanced by the learned counsel for the applicant and the learned Additional Public Prosecutor for the State. I have also perused the charge-sheet and the affidavit-in-reply filed by the Investigating Officer. On prima facie evaluation of the material placed on record, it appears that the main role attributed to the applicant is that of keeping a watch or being present near the scene of offence when the alleged incident occurred. It is specifically observed that in the CCTV footage, which forms part of the prosecution's material, the applicant is not seen at the spot of the actual occurrence.

6. Further, on the basis of the available record, there is no concrete material to show that the applicant was directly involved in planning or committing the dacoity. His presence, if at all, appears to be peripheral and not central to the offence. There is no allegation that the applicant snatched the cash bag or assaulted the informant. In absence of any cogent prima facie material to show active participation in the commission of the offence, and given the minor role attributed to him, the bar under Section 21(4) of the MCOCA, which imposes restrictions on grant of bail, may not strictly apply in the facts of the present case.

7. It is also relevant to note that the applicant was arrested on 1st April 2023 and has undergone incarceration for a substantial period of over 3 years and 2 months. The maximum punishment prescribed for the offences allegedly committed by him under the IPC and MCOCA, even if proved, will have to be weighed against the time already undergone. There is no progress shown in the trial and the prosecution has not indicated any likelihood of early conclusion.

8. It is well settled that prolonged pre-trial detention militates against the constitutional mandate of Article 21, as held by the Hon'ble Supreme Court in *Hussainara Khatoon vs. State of Bihar* [(1980) 1 SCC 81] and later affirmed in *Satender Kumar Antil vs. CBI* [(2022) 10 SCC 51]. Hence, prolonged custody without timely trial amounts to punishment without conviction and would justify grant of bail, particularly when the role is not of a grave nature.

9. There is also no material to suggest that the applicant is a flight risk or likely to abscond. He has no recent history of interfering with the investigation or tampering with the evidence. In such circumstances, it would be just and proper to release the applicant on bail, subject to strict conditions so as to ensure that he does not misuse the liberty granted to him, does not tamper with the evidence, or intimidate witnesses, and cooperates with the trial.

10. In view of the above discussion and the legal position, the following order is passed:

(a) The Bail Application is allowed.

(b) The applicant, *Sarfaraj Salim Shaikh*, shall be released on bail in connection with Crime Register No. 211 of 2023, registered with L.T. Marg Police Station, Mumbai, for the offences punishable under Sections 395 and 120-B of the IPC and Sections 3(1)(ii), 3(2), and 3(4) of the Maharashtra Control of Organised Crime Act, 1999, upon furnishing a Personal Bond of ₹25,000/- (Rupees Twenty-Five Thousand only) with one or more solvent sureties in the like amount, to the satisfaction of the learned Trial Court.

(c) The applicant shall not tamper with the prosecution evidence or attempt to contact, influence, threaten, or intimidate any witness, particularly the informant or his family members, in any manner whatsoever.

(d) The applicant shall report to L.T. Marg Police Station, Mumbai, on the first Monday of every month between 10:00 a.m. and 12:00 noon, until further orders from this Court or the Trial Court.

(e) The applicant shall attend the proceedings before the Trial Court on each and every date, unless specifically exempted by the Court on valid grounds.

(f) The applicant shall not leave the jurisdiction of the Trial Court without obtaining prior written permission of the said Court.

(g) The applicant shall not indulge in any criminal activity or commit any offence during the pendency of the trial.

(h) The applicant shall furnish his current residential address and contact number to the Investigating Officer as well as to the Trial Court at the time of furnishing surety, and shall inform them in writing of any change in address or contact details.

(i) It is made clear that any breach of the above conditions shall entitle the prosecution to move an application for cancellation of bail, and such application shall be considered on its own merits.

11. The Bail Application stands disposed of in the above terms.

(AMIT BORKAR, J.)