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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2080 OF 2024

Sunil Narayan Angane .. Applicant

Versus

The State of Maharashtra .. Respondent

…………………

- Mr. Ankush H. Dhokale, Advocate for Applicant.
- Mr. Mayur Sonavane, APP for Respondent – State.
- ACP – Chandrakant Jadhav, D-East, DCB, CID present.
- PI – Rajashree Balgi, Unit No.7, DCB, CID.

…………………

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 21, 2025.

P.C.:

1. Heard Mr. Dhokale, learned Advocate for Applicant and Mr. Sonavane, learned APP for Respondent – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Bail in connection with MCOC Special Case No.624 of 2020 pending before the Special Judge under MCOC Act, Greater Mumbai for the offences punishable under Sections 387, 452, 120-B read with 34 of the Indian Penal Code, 1860 (for short "**IPC**") and Sections 3(1)(ii), 3(2), 3(4) and 3(5) of the Maharashtra Control of Organised Crime Act, 1999 (for short "**MCOC Act**").

3. Though the charges under the MCOC Act are invoked against the Applicant, the prosecution is not in a position to show any predicate offence registered against the Applicant prior in point of time. However, Mr. Sonavane has drawn my attention to a substantive offence of similar nature wherein the Applicant has been indicted. He has placed on record compilation of documents stating that on 04.03.2021 an offence has been registered against Applicant under Section 387 and 506(2) read with 34 of IPC. First Information Report (for short "**FIR**") in that offence shows that the date the occurrence as 08.07.2018 to 27.02.2021. Admittedly Applicant has been in custody from 01.02.2020 in the present offence.

4. Statement of the Complainant in the second offence has been recorded which is appended at Exhibit "E" – page No.584 of the Bail Application. Mr. Sonavane has read the entire statement and attempted to persuade me that the said offence and statement would clearly show the role of Applicant as being an associate of gang leader namely Accused No.4 in the present offence called Prasad Pujari. Before I delve on the merits of the present matter it needs to be reiterated that the subsequent FIR dated 24.03.2021 which is alleged against Applicant before me gives details of the offence in the version of the Complainant as stated therein. Unfortunately the same does not match with the statement of the Complainant which is recorded 8 days prior to the occurrence of alleged incident of the said FIR.

5. There is a distinct dichotomy in the alleged charges in the statement dated 16.03.2020 and what is appearing in the FIR. The said FIR has been placed before me by Mr. Sonavane who persuaded me to consider the antecedents of the Applicant in order to oppose the present Bail Application. I have considered the same and given my observations herein.

6. In the present case in hand, the prosecution case in brief and in extenso is clearly made out from the FIR appended at page No.39 of the Bail Application. A better version of the said copy which is legible is at page No.525 of the Bail Application. FIR is lodged on 01.02.2020 on which date the Applicant has been arrested and is incarcerated since then. Complainant's case that he is the proprietor of the Company called 'Vighnaharta Developers' in Vikhroli area and involved in redevelopment projects.

7. Complainant states that on 22.06.2018 at about 21:14 hours at night he received WhatsApp message on his mobile phone from an international number. In that message Accused No.4 identified himself and informed Complainant that he had spoken to him earlier with respect to redevelopment project which was undertaken by him and asked him for Rs.1 crore and threatened to shoot him and also informed him that he was free to complain to the police.

8. Complainant stated that on the following day i.e. 23.06.2018 at about 22:23 hours in the night he replied to the message that was received from Accused No.4 since he knew him and informed him that his redevelopment project is yet to commence. Complainant states that on 30.01.2020 he was sitting in his office in Vikhroli area between 02:30 p.m. and 03:00 p.m. when Applicant who was known to the Complainant and residing in the same vicinity approached him in his office and enquired about his presence. Both of them had a chat and thereafter Applicant told him that he is meeting him at the instance of Accused No.4 and would be willing to make the Complainant talk to Accused No.4 on phone. Complainant states that after Applicant spoke to him, he told him not to engage Accused No.4 on phone and asked him to go away. After this Complainant states that Applicant left the premises.

9. The rest of the statement in the FIR is not relevant in so far as the present Applicant is concerned because it does not concern the Applicant before me. There is one more incident which is stated by the Complainant i.e. in December 2020. Complaint has been lodged on the ground of complainant receiving threat to his life and extortion demand of Rs.10 lakhs from Accused No.4. When the copy of the complaint is seen, *prima facie* in so far as role of Applicant before me is concerned it is restricted only to his visit on 30.01.2020 to the office of the Complainant as delineated herein above and nothing more.

10. In the course of submissions, Mr. Sonavane, learned APP has drawn my attention to the Affidavit filed by Assistant Commissioner of Police, Detection-East, Crime Branch, Mumbai and the Exhibits appended thereto. He would submit that Applicant has received in his bank account certain amounts which would go to show that he has received the proceeds of crime as also the amounts from Accused No.4 who is an international gang leader. Accused No.4 has been arrested 5 months ago and he is in custody.

11. In that regard,my attention is drawn to page No.551 which is bank statement of the Applicant appended at page No.586 of the Bail Application. My attention is drawn to the two specific entries, first dated 13.09.2019 wherein Applicant has received a credit of Rs.25,000/- and second entry dated 14.08.2018 wherein Applicant has withdrawn an amount of Rs.2,00,000/-. Save and except pointing out these entries the nexus of these entries to the Applicant in question and its nexus with proceeds of crime nor the said amount having been received by the Applicant for commission of crime in the present case is not established. Hence mere arguments / submissions cannot be countenanced.

12. Mr. Dhokale, learned Advocate for Applicant has placed before me compilation of documents. Applicant *prima facie* if seen appears to be a man of means living in Vikhroli area, the same has been confirmed even by the Complainant in the present case when he states that the Applicant and Accused No.4 both were living in a nearby building in Tagore Nagar, Vikhroli (East), Mumbai and he knew them right since the beginning.

13. Mr. Dhokale has placed before me a registration certificate issued under the Maharashtra Shops and Establishments Act, 1948 in the name of an establishment viz, 'Angane Milk & Milk Products' which stands in the name of Applicant. He would submit that since arrest of the Applicant, the said business has completed stopped.

14. Another submission of Mr. Sonavane is that Applicant has received an amount of Rs.25,000/- through Accused No.2 namely one Sukeshmukar from some place in Karnataka since Accused Nos.2 and 3 were residing over there. Accused No.3 is the mother of Accused No.4. and Accused No.2 is nephew of Accused No.3. They are residing in their native village in some district in Karnataka. The amount of Rs.25,000/- as delineated herein above is attempted to be shown by the prosecution to be relevant to alleged extortion amount in the present case. Once again apart from submission, no nexus is established.

15. There is another document which Mr. Sonavane has drawn my attention to which is supplementary statement of Complainant in the present case. This supplementary statement has been recorded on

26.02.2020 after the filing of the present complaint. In that supplementary statement Complainant has infact further stated about the conversation which he had with Accused No.4 on WhatsApp pursuant to the arrest of the present Applicant. The conversation is in Hindi language but depicted in English language and it is appearing on page No.430. Reading of the same reveals that Accused No.4 has informed the Complainant that the present Applicant was a mere friend and he has virtually no role whatsoever to play in the present case.

16. As stated herein above as also it is admitted that Applicant and Accused No.4 were residing in the same building albeit on a different floor and therefore they knew each other. Role of Applicant not being clear for his indictment persuades me to consider his Application for bail. Applicant before me has been incarcerated for almost 5 years. In so far as the trial is concerned, I am informed that 7 witnesses have been examined till date and in the foreseeable future there is no possibility that the trial would be completed. Prosecution as informed by Mr. Sonavane desires to examine further 8 – 9 witnesses.

17. Considering the charge and indictment of the Applicant under Section 387 and the specific role attributed to the Applicant before me in the complaint itself, I am inclined to consider the case of the Applicant for grant of bail.

18. This is a case concerning liberty of an under-trial who has been incarcerated for almost 5 years, a situation impacting the rights of undertrial conferred by Article 21 of Constitution to speedy justice as also personal liberty. In so far as the power of high courts to grant bail is concerned, when the case is such that involves a question of personal liberty of an undertrial who is incarcerated for a very long period, the powers are wide and unfettered by conditions, the principle rule being that bail is the rule and refusal is the exception, allowing accused persons to better prepare their defense.

19. In the case of ***Emperor vs H.L. Hutchinson***[1] the Allahabad High Court, as far back as in the year 1931 held that power of granting bail conferred on High Court is entirely unfettered by any conditions. It held that legislature has given the High Court and the Court of Session discretion unfettered by any limitation other than that which controls all discretionary powers vested in a Judge, viz. that the discretion must be exercised judiciously. The Court has given primacy to the fact that accused person if granted bail will be in a much better position to defend himself. In this very case, it was delineated that grant of Bail is the Rule and refusal is an exception. This was in the famous Meerut Conspiracy case. Justice Mukherjea writing for the Bench in paragraph No.9 held as under:-

1 AIR 1931 ALL 356

> *"9. Speaking for myself, I think it very unwise to make an attempt to lay down any particular rules for the guidance of the High Court, having regard to the fact that the legislature itself left the discretion of the Court entirely unfettered. The reason for this action on the part of the legislature is not far to seek. The High Court might be safely trusted in this matter and it goes without saying that it would act in the best interests of justice whether it decides in favour of the prosecution or the defence. The variety of cases that may arise from time to time cannot be safely classified and it will be dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes."*

20. The Supreme Court in a landmark decision of 1978 in the case of ***Gudikanti Narasimhulu & Ors. v. Public Prosecutor, High Court of Andhra Pradesh***[2] *observed as under:-*

> *"6. Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve. When the case is finally disposed of and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage and the* ***principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be liberated, to take judgment and serve sentence in the event of the court punishing him with imprisonment.*** *In this perspective…" (emphasis supplied)*

21. The Supreme Court in a plethora of judgements have discussed the rights conferred by Article 21 qua grant of bail and that such rights cannot be taken away unless the procedure is reasonable and fair and in cases where there is unreasonable delay in trial it would undoubtedly impact the rights of an undertrial.

22. In the case of ***Hussainara Khatoon Vs. Home Secy., State of Bihar***[3] the Supreme Court held as under:-

2 1978 (1) SCC 240

3 (1980) 1 SCC 81

> *"Now obviously procedure prescribed by law for depriving a person of liberty cannot "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21."*

23. The Supreme Court in the case of ***Shaheen Welfare Association vs Union Of India***[4] dealing with a Public Interest Litigation seeking reliefs for undertrial prisons charged under the Terrorist and Disruptive Activities (Prevention) Act, 1987 held as under:-

> *"10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh's case (supra), on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21."*

24. The Supreme Court in case of ***Union of India v. K. A. Najeeb***[5] while commenting upon the possibility of early completion of trial and extended incarceration held as under:-

> "*12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act") which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), Babba v. State of Maharashtra and Umarmia v. State of Gujarat enlarged the accused on bail when they had been in jail for an extended*

4 1996 SCC (2) 616
5 Criminal Appeal No. 98 of 2021

> *period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians."*

25. Applicant in present case has been in custody for almost five years. There is no possibility of the trial being completed in the near future. Detaining an under-trial individual for such an extended period further violates his fundamental right to speedy trial flowing from Article 21 of the Constitution. At this juncture I deem it appropriate to list certain observations of the Supreme Court shedding light on concerns underlying the "Right to speedy trial" from the point of view of an accused in custody whose liberty is affected. In the case of ***Abdul Rehman Antulay & Ors. Vs R.S. Nayak & Anr.***[6] the Supreme Court held as under:-

> *"86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:*
>
> *(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.*
>
> *(2) Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view.*
>
> ***(3) The concerns underlying the Right to speedy trial from the point of view of the accused are:***

6 1992 (1) SCC 225

> ***(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;***
>
> ***(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and***
>
> ***(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise."***
>
> *(4) – (11)* -------x------- *(emphasis supplied)*

26. Mr. Sonavane has also expressed one more apprehension that there is every likelihood that the Applicant if enlarged would indulge in a similar act / offence. This Court can undoubtedly impose appropriate stringent conditions to address that apprehension.

27. In view of the above, Bail Application is allowed subject to the following terms and conditions:-

(i) Applicant – Sunil Narayan Aagane is directed to be released on bail on furnishing P.R. Bond of Rs.50,000/- (Fifty Thousand Only) with one or two sureties of the like amount;

(ii) Applicant shall not influence any witness or tamper with the evidence in any manner;

(iii) Applicant is directed to stay outside the jurisdiction of Mumbai City and the Mumbai Suburban District for a period of six (6) months and he shall be entitled to enter the jurisdiction only for the purpose of attending the Investigating Officer as directed herein and for attending the trial on the scheduled dates of hearing in the Court;

(iv) Applicant shall attend the concerned Investigating Officer on the first Monday of every month between 10:00 p.m. to 12:00 p.m. till the conclusion of the trial or as and when called for;

(v) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all hearing dates, unless specifically exempted and will not take any unnecessary adjournments. If he does so it will entitle the prosecution to apply for cancellation of this order;

(vi) Applicant shall not leave the State of Maharashtra without prior permission of Trial Court. He shall deposit his passport, if any, with the Trial Court within one week of his release from prison.

(vii) Applicant shall keep the Investigating officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time, as applicable; and

(viii) Any infraction of the above conditions shall entail prosecution to apply for cancellation of bail granted to the Applicant.

28. It is clarified that the observations in this order are for the limited purpose of granting Bail and are merely *prima facie* in nature.

29. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

AJAY TRAMBAK UGALMUGALE

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