

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2412 OF 2024

1. Akil Yusuf Lakdawala @ Akil Merchant
2. Sagar Satishkumar Yadav .. Applicants
Versus
State of Maharashtra and Anr. .. Respondents

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- Mr. D.S. Manohar a/w Mr. Rohit Yadav for Applicants
 - Ms. Mahalakshmi Ganapathy, APP for State.

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CORAM : MILIND N. JADHAV, J.
DATE : FEBRUARY 25, 2025

P. C.:

1. Heard Mr. Manohar, learned Advocate for Applicant and Ms. Ganapathy, learned APP for Respondent-State.

2. Applicants have filed the present Application for regular bail in Special Case MCOC Case No. 10 of 2019 in connection with C.R. No. 23 of 2019 registered with DCB CID for the offences punishable under Sections 387 and 120-B of the Indian Penal Code, 1860 (for short "**IPC**") and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short "**MCOC Act**").

3. In compliance of the order dated 18.02.2025, Ms. Ganapathy, learned APP has placed before me the report dated 25.02.2025 and persuaded the Court to place the same on record in place of the affidavit as prosecution is not sure as to who would file the affidavit.

4. Be that as it may, I have considered the report. According learned APP and as stated in the report, the prosecution is yet to examine 8 more witnesses but it is informed to the Court that the details of prosecution witnesses cannot be given to the Court as the prosecution is *prima facie* unsure as to whether the said witnesses may or may not turn out for giving evidence and in their absence the other panch witnesses may have to be examined. Considering the exigency expressed by the learned APP, I am inclined to consider the present Application for grant of bail on the ground of long incarceration of the Applicants in prison.

5. Learned APP on instructions informs the Court that the prosecution shall make every endeavor that the trial shall be concluded by the end of May, 2025. However in view of the report placed before the Court, it *prima facie* appears to be an indistinct possibility and there is no material placed before the Court to *prima facie* consider and believe the submissions made by the learned APP.

6. After hearing learned Advocate on 18.02.2025, it was delineated in the order that the only reason which impels me to consider the present Application is the long incarceration of the Applicants in the present case. Considering the impossibility of the trial being concluded in the near foreseeable future Applicants' case is taken up for bail.

7. Applicants are incarcerated in Crime No. 117/2019 registered with Khar Police Station for the offences punishable under Sections 387 and 120-B of IPC. They are also indicted and arrested on 28.02.2019 for offences punishable under Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act which have been added subsequently. According to the prosecution, Applicants are the members of an organized crime syndicate of which main accused Ejaj Yusuf Lakdawala is the gang leader. According to the prosecution, there are more than one chargesheet of cognizable cases having punishment of 3 years or more filed against the said gang leader pending before the competent Courts within the preceding 10 years and competent Courts have taken cognizance of the said charges. According to prosecution on the basis of witness statements which are recorded, involvement of the present Applicants / accused persons is *prima facie* seen in the crime in question and the crime is committed by the organized crime syndicate of which the Applicants are gang members. Case of the prosecution is that Applicants were constantly in contact with the head of the organized crime syndicate i.e. gangster Ejaj Lakdawala and co-accused Sagar Yadav (Applicant No. 2) on mobile phones during the commission of the present offence. Prosecution has relied upon CDRs in support of its case against the Applicants.

8. My attention is drawn by the prosecution to the affidavit in reply dated 13.09.2024 filed by Mr. Kishorkumar Shinde, Assistant Commissioner of Police D (Special), DCB, CID, Mumbai which is appended at page Nos. 1240-1250 of the Application to contend that in the confessional statement of the co-accused Sagar Yadav and the head of organized crime syndicate Ejaj Lakdawala recorded under Section 18 of the MCOC Act before the Competent Authority, role of the present Applicant No. 1 is described by them and as such Applicants are therefore disentitled for grant of bail. It is also pointed out that previously Applicants had filed Bail Application No. 3571/2019 followed by further Bail Application No. 1785/2020 before this Court. The first Bail Application was rejected whereas second Bail Application was withdrawn by the Applicants.

9. In so far as the present Applicants before me are concerned, Applicant No. 1 is arrested on 28.02.2019 whereas Applicant No. 2 is arrested on 02.04.2019 and since then they are in custody. It is seen that complainant received extortion call on 05.12.2018 allegedly from a foreign number and the caller claimed to be the gang leader Ejaj Lakdawala and demanded extortion money from the complainant for the construction and development work undertaken by the complainant. Complainant therefore lodged complaint with Khar Police Station. According to complainant, threat was given to the employee of the complainant that if Rs. 50 Lakhs was not paid, there

would be threat to the life of the complainant. Applicant No. 1 is the brother of gang leader Ejaj Lakdawala.

10. In the course of investigation of the present crime, record shows that prosecution has arrested business partner of the complainant which itself *prima facie* dilutes case of the prosecution against the Applicant. Record also shows that in the course of investigation, prosecution had arrested the daughter of Ejaj Lakdawala who is married and resident of Mumbai in a false crime with a view to pressurize him to surrender before the police. Prosecution has arrested Ejaj Lakdawala and on his arrest they have discharged his daughter from the crime.

11. Role of the present Applicants in the alleged crime namely relating to the extortion threats is therefore required to be seen. The only material with the prosecution *prima facie* are the CDRs which they claim to have intercepted and interpreted to show nexus of Applicants with the crime in question. *Prima facie* it is seen that there is nothing incriminating placed on record by the prosecution to enable the Court to see a direct role of the Applicants save and except the statements of the co-accused and CDR records. It is seen that this Court itself in Bail Application No. 1785/2022 on 04.11.2023 while disposing of the said Bail Application directed the Trial Court to complete the trial within a period of six months from the date of that

order and liberty was granted to the Applicant therein to file fresh Bail Application after 6 months if the trial was not concluded. The trial is still pending. It is stated in the Application that prosecution desires to examine 20 more witnesses. It is seen that one of the co-accused who was arrested later in the present crime has been released on bail by this Court on 21.07.2023. That order is appended at page Nos. 1224-1238 of the Application. I have perused the same.

12. From perusal of the FIR in the present case, *prima facie* it is seen that partner of the complainant firm engaged in construction activity has alleged to have received calls from 05.12.2018 to 27.02.2019 from Ejaj Lakdawala demanding extortion amount of Rs. 50 Lakhs, based on which the crime was registered. The only piece of *prima facie* material is the confessional statement of the co-accused Ejaj Lakdawala which states that Applicant No. 1 herein had settled the matter for Rs. 10 Lakhs and that the Applicant No. 1 had provided information relating to the first informant in Crime No. 5/2020 to his brother pursuant to which calls were made for extortion. Save and except this, there is no other material against the accused which is *prima facie* seen. Complicity of the Applicants undoubtedly will be proven in the Trial.

13. However considering the long incarceration of both Applicants in the present crime for a period of six years (approx), right

to speedy justice and liberty is therefore required to be considered. The trial will take its own course.

14. Applicants have been in custody for almost six years. Detaining an under-trial individual for such an extended period violates his fundamental right to speedy trial flowing from Article 21 of the Constitution. At this juncture, I deem it appropriate to list out the observations of the Hon'ble Supreme Court shedding light on concerns underlying the Right to speedy trial from the point of view of the accused in custody whose liberty is affected in the case of ***Abdul Rehman Antulay & Ors. Vs. R.S. Nayak & Anr***¹.

“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:

(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;

¹ 1992 (1) SCC 225

(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)

15. The Supreme Court has also simultaneously laid down in a series of judgments and orders that in situations where the under-trial / accused persons have suffered incarceration rather long incarceration for considerable period of time and there is no possibility of the trial being completed within the foreseeable future, Constitutional Courts can exercise power to release the accused under-trials on bail, as bail is the rule and jail is an exception.

16. Furthermore, the Supreme Court in the case of *Javed Gulam Nabi Shaikh v. State of Maharashtra*,² observed as follows:

“18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article

² 2024 SCC OnLine SC 1693

21 of the Constitution applies irrespective of the nature of the crime.”

(emphasis added)

17. In *Satender Kumar Antil v. CBI*², Supreme Court reiterated the following stand regarding jurisprudence of bail:

“12. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India...”

(emphasis added)

18. Hence considering the long incarceration of the Applicants, the progress of the trial and in view of the *prima facie* observation of the specific role of present Applicants as delineated herein above, I am of the opinion that Applicants deserve to be enlarged on bail.

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

- (i) Both the Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- each with one or two sureties in the like amount;
- (ii) Applicants shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 am to 12:00 pm for the first three months and thereafter as and when called;
- (iii) Applicants shall co-operate with the conduct of trial and

attend the Trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if they do so, it will entitle the prosecution to apply for cancellation of this order;

(iv) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;

(v) Applicants shall not influence with any of the witnesses or tamper with the evidence in any manner;

(vi) Applicants shall keep the Investigating Officer informed of their current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;

(vii) Any infraction of the above conditions shall entail cancellation of this order.

20. It is clarified that the observations in this order are limited for the purpose of granting Bail only and I have not made any observations on the merits of the case and the trial shall be adjudicated on its own merits, evidence and strictly in accordance with law.

21. Bail Application is allowed and disposed.

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by RAVINDRA
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[MILIND N. JADHAV, J.]