

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3922 OF 2024

Prathamesh Shivram Kadam @ Bhaya	.. Applicant
Versus	
State of Maharashtra	.. Respondent

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- Mr. Tabish Mooman for Applicant
 - Ms. Megha S. Bajoria, APP for State
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 20, 2025

P. C.:

1. Heard Mr. Mooman, learned Advocate for Applicant and Ms. Bajoria, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.P.C.**") in connection with C.R. NO. 5/2018 registered with DCB CID, Mumbai for offences punishable under Sections 120-B, 387 r/w 34 of the Indian Penal Code, 1860 (for short, "**IPC**"); Sections 3 and 25 of the Indian Arms Act, 1959 and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short "**MCOC Act**").

3. Applicant is arraigned as accused No. 4 in the present crime. In all there are 7 accused persons out of which one accused is juvenile. Role of the Applicant attributed as per the case of prosecution is that

he along with accused Nos. 3 and 5 on receiving orders from accused No. 6 executed the crime. Specific role attributed to the Applicant is delineated in the affidavit dated 17.03.2025 filed by Mr. Kishorkumar Shinde, Assistant Commissioner of Police, D(Special), DCB, CID, Mumbai. Role of accused persons according to the prosecution case is described in the confessional statement of accused No. 1 which has been recorded immediately after commission of crime in February 2018.

4. Learned APP would submit that gravity of the crime is serious as also application of the Special Act and more specifically in respect to the gang leader arraigned as accused No. 6 in the present crime. Despite the time lapse she would submit that the Application be rejected. However, in her usual fairness she would inform the Court that charge has been framed but the trial has not yet commenced.

5. Mr. Mooman would persuade the Court to consider two grounds for enlarging the Applicant on bail. Firstly he would submit that period of long incarceration of more than 7 years in custody / jail pending trial be considered by the Court for releasing the Applicant on bail as commencement of the trial in the near foreseeable future is an indistinct impossibility. Secondly he would contend that accused Nos. 1 and 3 have been released on bail. In this regard he would submit that even according to the prosecution case, the main conspirator of

the crime in question is accused No.1 whereas the role attributed to co-accused No. 3 and the present Applicant is the same.

6. With the able assistance of learned Advocates at the bar, I have perused the Application and record of the case. The only reason which impels me to consider the present Application of the Applicant is his long incarceration pending trial. That apart role attributed to him by the prosecution being similar to the role of co-accused No. 3 who has been released on bail by Court is another reason for considering this Application on parity. Right to speedy trial as enshrined under Article 21 of the Constitution of India coupled with right to liberty entitles the Applicant to be released on bail. Hence, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- (ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (v) Applicant 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 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 the Trial Court;
- (vii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (viii) Applicant shall not enter the territorial jurisdiction of the concerned Police Station except for attending the IO for attendance and Court proceedings. He shall not reside in the jurisdiction of that Police Station until completion of trial;
- (ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before

trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

7. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

8. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
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Date:
2025.03.20
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