

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.759 OF 2025

Akhilesh Shailesh Tiwari

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Nitin Sejpal a/w. Ms. Pooja Sejpal, Advocate for the Applicant

Mrs. Kranti T. Hiwrale, APP, for the Respondent – State

Mr. Sanjay Chavan, PSI, Virar Police Station, present

CORAM : SANDESH D. PATIL, J.

DATE : 5TH DECEMBER, 2025.

JUDGMENT :-

1. By the present application, the applicant is seeking bail in MCOC No. 518 of 2012 pending before the learned Special Judge MCOC, Thane, arising out of CR No. I-232 of 2022 registered under Sections 302, 201, 212, 120 (B) of the Indian

Penal Code and Sections 3, 25, 27 of the Arms Act. So also under Sections 3(1) (i), 3 (1) (ii), 3(2), 3(3) and 3(4) of the MCOC Act.

2. The incident in respect of which FIR is lodged had taken place on 26th February 2022. The accused was arrested on 14th July 2022. The FIR was registered by one Shashikant Chavan as his brother Samay was murdered.

3. During the investigation, it was revealed that there are certain builders, who in conspiracy have committed the offence. The investigation was completed, chargesheet was filed. After the arrest of the present co-accused supplementary chargesheet was filed.

4. Mr. Sejpal, the learned counsel appearing for the applicant contended that the only role attributed to him is that he was conspirator in the offence. He has taken me to two confessional statements, which are recorded under the provisions of Section 18 of the MCOC Act, which shows involvement of the

present applicant. The said statements are of Rahul Sharma and Arjun Singh. The confessional statement of Arjun Singh specifically names the present applicant as one, who has shown the photographs of the deceased and has asked them to go the Mumbai along with Rahul Sharma.

5. The learned counsel, Mr. Sejpal submits that except the two confessional statements recorded under Section 18 of the MCOC, there is no material of whatsoever nature against the applicant.

6. He states that the other accused are granted bail. He relies upon certain orders passed by this Court releasing the co-accused Ashish Shukla, Ashok Sharma, Akash Ashok Sharma, Rajkumar Yadav, co-accused Naitik Ajit Tiwari, co-accused, Abhishek Singh and co-accused, Rahul Dubey on bail.

7. The learned counsel, Shri Sejpal submits that this court while releasing the co-accused Rahul Dubey has specifically referred to the confessional statement of the co-accused.

8. The learned APP points out that there are two confessional statements of the co-accused. She states that the confessional statements under Section 18 of the MCOC Act are relevant for the purpose of deciding bail. She states that although the learned counsel, Mr. Sejpal has relied upon orders passed by this court granting bail to the co-accused, the parity cannot be applied in this case. She states that the accused was absconding for a period of more than 4 months and therefore, application for bail ought to be rejected.

9. With the able assistance of the learned counsels appearing for the parties, I have perused the chargesheet, the orders passed by this Court as well as the learned Special Court.

10. The case against the applicant is not that he was the actual assailant. The case is that he had conspired along with the others to commit murder of the deceased. The gang leader is said to be one Rahul Sharma, who took the contract to commit murder.

11. The allegations against the applicant is that he has shown the photograph of the deceased to the other co-accused. The allegations is that Rs.7,000/- were given to Arjun Singh.

12. The accused has been arrested on 14th July 2022 and he is in jail since then. Upon query made to both the counsels, they informed me that there are about 91 witnesses, which are sought to be examined. Both the counsels state that even the charge is not framed in the matter.

13. No doubt the statements under provisions of MCOC Act are relevant for the purpose of deciding the bail application. Although the learned APP relies upon the confessional statement of Arjun Singh and specifically emphasizes the relevant paragraph, which is on Page No.197, which states that *“the present accused called the said witness and asked him to go to Mumbai”*. She also states that certain money was given to the said accused by the present applicant.

14. The learned counsel, Mr. Sejpal however invites my attention to the statement of same witness, which was recorded before the Chief Judicial Magistrate, Thane on 9th February 2022. He has specifically referred to the paragraph on Page No.188, which states that except the bracketed portion at A, B, C, D, E, rest of the portion is not admitted by him. He has thus retracted the confessional statement, before the Chief Judicial Magistrate.

15. The evidentiary value of such retracted confessional statement has to be considered at the time of trial. Prima facie except this confessional statement, there is nothing against the present applicant to show his involvement in the offence.

16. It is also required to be noted that the accused is in jail since 14th July 2022. There are about 90 witnesses, which are sought to be examined by the prosecution in this case. As on today, even charge has not been framed. Thus trial will take pretty long time. The Apex Court in the matter of *Union of India V/s. K.A. Najeeb reported in (2021) 3 SCC 713* has considered this aspect as under :-

“18. It is thus clear to us that the presence of statutory restrictions like Section 43D (5) of UAPA perse 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 43D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

17. No doubt, it is true that the modified provisions of Section 21 of MCOC Act are very stringent, however, taking into consideration the long incarceration of the present applicant, without trial being commenced and further taking into consideration, the retracted confession of the co-accused, I feel that this is a fit case where bail deserves to be granted to the applicant. Therefore, the present Bail Application is allowed on the following terms and conditions :-

ORDER

- (a) The applicant be released on bail in connection with MCOC Case No.518 of 2012 pending before the learned Special Judge MCOC, Thane, arising out C.R. No. I-232 of 2022 registered with the Virar Police Station for the offence punishable under Sections 302, 201, 212, 120 (B) of the Indian Penal Code and Sections 3, 25, 27 of the Arms Act and under Sections 3(1) (i), 3 (1) (ii), 3(2), 3(3) and 3(4) of the MCOC Act, 1999, on PR Bond of Rs.1,00,000/- (Rupees One Lac Only) with one or two sureties of the like amount.
- (b) The applicant shall not tamper with the evidence or attempt to influence any witness in any manner.
- (c) The applicant shall appear before the Trial Court on every date unless exempted.
- (d) The applicant to report to the Mira-Bhayander Vasai – Virar Commissionerate on every Monday between 10.00 a.m. to 2.00 p.m. until further orders.
- (e) The applicant shall give his mobile number, Aadhar number, his permanent address as well as his temporary address to the Investigating Officer.
- (f) The applicant shall not enter the limits of the Vasai-Virar Municipal Corporation.
- (g) The applicant shall not indulge in any criminal activity during the pendency of the trial.

- (h) The applicant will attend the Court on every date. In the event the applicant absents himself for two consecutive dates of hearing; the prosecution shall have liberty to move an application for cancellation of bail.
- (i) Bail Application is disposed of.

(SANDESH D. PATIL, J.)

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