

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.1794 OF 2025

1) Shiva Babu Nimbalkar &	
2) Rahulsingh Bablusingh Junni @	
Sardar @ Modi Sardar	... Applicants
V/s.	
The State of Maharashtra	... Respondent

Mr. Santosh M. Deshpande for the applicants.

Ms. Supriya Kak, APP for the respondent-State.

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CORAM : AMIT BORKAR, J.

DATED : AUGUST 25, 2025

P.C.:

1. By the instant bail application filed under Section 439 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), the applicants are seeking their release on regular bail in connection with Crime Register No. 278 of 2022, registered at Vitthalwadi Police Station, for offences punishable under Sections 395, 397, 452 and 201 of the Indian Penal Code, 1860 (for short, "IPC").

2. The case of the prosecution, as can be gathered from the First Information Report, is that on 30th August 2022 at around 5.00 a.m., when the complainant and his family members were asleep, the wife of the complainant suddenly woke up and found three unknown persons with their faces covered standing inside the house. Out of fear, she immediately rushed towards the bedroom and raised alarm. The complainant and other family

members woke up. The said intruders, who were armed with weapons, threatened the family members and demanded gold and cash. It is alleged that they broke open the drawer, took away gold ornaments, cash, a DVR of the CCTV system, and a mobile phone. Later, the said accused persons were allegedly noticed outside the house. On this basis, the complaint was registered.

3. Learned Advocate for the applicants has drawn my attention to an order passed by a coordinate Bench of this Court on 3rd April 2025, whereby three co-accused persons in the same crime were directed to be released on bail. The coordinate Bench, while granting them bail, considered the aspect of long incarceration from 6th September 2022 till 3rd April 2025, which was held to be sufficient ground to enlarge them on bail, notwithstanding the fact that offences under Section 395 of IPC and also provisions of the Maharashtra Control of Organized Crime Act, 1999 ("MCOCA" for short) were invoked. On the strength of the said order, it is urged that the applicants also deserve to be released by applying the doctrine of parity.

4. Per contra, the learned Additional Public Prosecutor opposed the application and relied upon the material collected during the course of investigation, which according to her, prima facie establishes the involvement of the applicants in the alleged offences. She pointed out that the material includes Call Detail Records (CDRs), confessional statements recorded under Section 18 of MCOCA, and other corroborative evidence, which directly point towards the complicity of the applicants. She submits that in view of this strong material, the applicants cannot seek their

release solely on the ground of long incarceration.

5. In support of her submissions, reliance is placed on the judgment of the Hon'ble Supreme Court in *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav*, (2005) 2 SCC 42, wherein the Court considered the ambit of Article 21 of the Constitution of India in the context of deprivation of personal liberty and held that such deprivation, if done strictly in accordance with validly enacted criminal law, is in conformity with the "procedure established by law" under Article 21.

6. The learned APP further relied upon the judgment of the Hon'ble Apex Court in *Pramod Kumar Saxena v. Union of India*, (2008) 9 SCC 685, wherein the Supreme Court reiterated the principles laid down in *Kalyan Chandra Sarkar* (supra). The Court held that long incarceration by itself cannot be the sole ground for release of an accused, particularly when serious offences carrying severe punishment, such as life imprisonment under MCOCA, are involved. It was further emphasized that while considering bail on the ground of long incarceration, the Court must examine whether the delay in trial is attributable to the accused themselves, or whether it is a systemic delay not attributable to the prosecution. The Court is also required to take into account the gravity of the offence and its impact on society. Therefore, in cases of organized crime or offences against society at large, the same yardstick of long incarceration cannot be mechanically applied.

7. To buttress her submissions, the learned APP also relied upon the judgment of the Division Bench of the Allahabad High

Court in *Nanha v. State of U.P.*, 1992 SCC OnLine All 871, wherein the issue of applicability of the doctrine of parity was examined in the backdrop of conflicting orders passed by coordinate Benches. The Court clarified that parity cannot be claimed as a matter of right, and that the applicability of parity must be tested on sound legal principles flowing from Article 14 of the Constitution of India. If the earlier order granting bail does not reflect the correct position of law or overlooks relevant considerations, such an order cannot become the basis for claiming parity. Relying upon this principle, she submitted that the earlier order of this Court releasing co-accused on bail is not a binding precedent for applying parity in favour of the present applicants, as it does not correctly reflect the settled position of law. She, therefore, submits that the applicants are not entitled to be released on bail merely on the ground of parity.

8. I have carefully considered the rival submissions and perused the record. The material relied upon by the prosecution such as CDRs, confessional statements under Section 18 of MCOCA, and other supporting evidence do prima facie indicate the involvement of the applicants in the crime alleged. The offences under Sections 395, 397 IPC and also under MCOCA are undoubtedly of a serious nature, having wide ramifications on the safety and security of society. Ordinarily, such material would weigh against grant of bail.

9. However, I cannot ignore that a coordinate Bench of this Court has already released three co-accused persons in the same crime by its order dated 3rd April 2025. The sole reason which

weighed with the coordinate Bench was the period of incarceration undergone by those co-accused, i.e. from 6th September 2022 till 3rd April 2025, which was held to be sufficiently long. In view of this development, the present applicants stand on an identical footing with those co-accused, and therefore, they seek bail on the ground of parity.

10. It is well settled that the doctrine of parity flows from Article 14 of the Constitution of India, which guarantees equality before law. Once bail has been granted to similarly placed co-accused in the same crime, denial of bail to others, without any distinguishing feature, may result in unequal treatment. At the same time, I must record my reservations about the correctness of the earlier order of the coordinate Bench, inasmuch as it granted bail solely on the ground of long incarceration without discussing the gravity of the offence, the material on record, or the parameters laid down by the Hon'ble Supreme Court in *Kalyan Chandra Sarkar* (supra) and *Pramod Kumar Saxena* (supra). Ideally, these considerations should have been addressed.

11. Nonetheless, once such an order has been passed by a coordinate Bench, judicial discipline requires that I extend the same benefit to the present applicants unless there is any distinguishing material against them, which is not the case here. No such differentiating factor has been brought to my notice. Denying bail to the applicants in the face of the earlier order may result in anomalous and discriminatory treatment, which is impermissible under Article 14.

12. In this backdrop, though with reservations, I am inclined to extend the benefit of bail to the present applicants by applying the principle of parity. It is clarified that this Court has not expressed any opinion on the merits of the prosecution case, and the observations herein are confined only to the question of grant of bail.

13. Hence, following order is passed:

- i) The bail application is allowed;
- ii) Both the applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) each with one or two sureties in the like amount;
- (iii) Before their actual release from jail, applicants shall furnish their addresses where they proposes to reside after their release from ail to the concerned Police Station and also to the trial Court;
- (iv) After their release from jail, applicants shall report to the investigating officer as and when called for;
- (v) Applicants shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark their 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;
- (vi) Applicants shall not enter the jurisdiction of Thane Police Station till the completion of trial except for attending

the investigating officer;

(vii) Applicants shall cooperate 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;

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

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

(x) 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.

14. The bail application is allowed and disposed of.

(AMIT BORKAR, J.)