



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (BA) NO. 405 OF 2025

(Shubham @ Ghubad S/o Dilip Wasnik

Vs.

State of Maharashtra, Police Station Officer, Jaripatka, Nagpur,
Tah. & Dist. Nagpur.)

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. D.M. Dixit, Advocate for the Applicant.

Mr. A.M. Ghogare, APP for the Non-applicant/State.

CORAM: URMILA JOSHI-PHALKE, J.

DATED : 7th JULY, 2025

1. By this Application, the Applicant seeking bail in connection with Crime No. 1306/2018 registered with Police Station Jaripatka, Nagpur for the offence punishable under Sections 302, 324, 114 r/w 34 of the Indian Penal Code r/w Section 135 of the Bombay Police Act, 1951 and Sections 4 & 25 of the Arms Act.

2. The Applicant came to be arrested on 15.11.2018 since then he is behind bars.

3. Learned Counsel for the Applicant, submitted that that the applicant is arrested on the basis of report lodged by one Sudhir Gajbhiye who alleged that prior to 15 days of the incident the dispute took place between the present applicant and co-accused persons with the deceased Sandip @ Kalu Gajbhiye. On 14.11.2018 at about 4:45 p.m. informant Sudhir

received information that someone is assaulting the deceased on the ground near Lalit Kalabhawan. He immediately rushed to the spot and found that his brother Sandip is lying on the ground and the accused along with the present applicant were assaulting him by the sharp weapon. After the incident, the present applicant and other co-accused fled away from the spot of incident.

4. Learned Counsel for the applicant submitted that the incarceration of the present applicant is for more than seven years in the said crime. The other co-accused namely Lakhan @ Lucky Dilip @ Dilip Wadhve is already released on bail by this Court on the ground of delay in trial. The accused Nos.3 and 4 namely Rishikesh @ Shambhu Ramesh Gowardhan and Tanmay @ Popo Raju Jadhav who have released on bail. Thus, he submitted that, the right of the present Applicant under Article 21 of the Constitution of India of a speedy trial is hereby affected. He invited my attention to the roznama and submitted that last witness was examined on 19.04.2023 and thereafter the investigation officer has filed an application under Section 10 of the Maharashtra Control of Organised Crime Act, (for short “MCOC Act”) and the trial kept in abeyance and there is no further progress in the trial. In view of Article 21 of the Constitution of India, the fundamental right of the accused is of a speedy trial and if it is affected then irrespective of the nature of the crime the Applicant shall be released on bail.

5. He further submitted that as far as Section 10 of the MCOC Act, is concerned, which states that the trial of any

offence under this Act by a Special Court shall have precedence over the trial of any other case against the accused in any other Court and shall be concluded in preference of the trial of such other cases. Thus, it is not that the in view of Section 10 of MCOC Act the other trial is to be stayed. He submitted that considering the long incarceration of the present Applicant and considering the fact that the right of the present Applicant of the speedy trial enshrined under Article 21 of the Constitution of India is affected, he be released on bail.

6. In support of his contention, he placed reliance on *Akash Satish Chandalia Vs. The State of Maharashtra, reported in 2023 NCBHC-AS 28583*, wherein this Court at the Principal Seat observed that Long incarceration as an undertrial can be a valid ground for granting bail, even in cases involving serious offences, if the trial is unlikely to conclude in a reasonable time. He also placed reliance on *Union of India Vs. K.A. Najeed, reported in 2021 CriLR (SC) 267*.

7. Learned APP, strongly opposed the said application and submitted that, considering 13 witnesses are already examined, trial is on the verge of its completion. In view of that, the Application deserves to be rejected. He further submitted that, as the Application is pending under Section 10, and therefore, there is no further progress. In view of that and considering the nature of the offence which is of serious and the role attributed to the present Applicant is also a specific role, the application deserves to be rejected.

8. Having heard learned Counsel for the parties. Perused the investigation papers. There is no dispute as to the fact that the applicant is implicated in the alleged offence on an allegation that he has assaulted the deceased by means of sharp weapon and caused his death. The statements of the eye-witnesses and the evidence recorded before the Court also shows the involvement of the present applicant in the alleged offence. There is also no dispute as to the fact that the Applicant is behind bar since the date of his arrest i.e. from 15.11.2018 i.e. for more than seven years. The co-accused are already released on bail and one of the co-accused namely Lakhan @ Lucky Wadhve is already released on bail considering that there is delay in trial. The accused Nos.3 and 4 namely Rishikesh @ Shambhu Ramesh Gowardhan and Tanmay @ Popo Raju Jadhav were released on bail alleged to have committed the offence under Section 307 of the Indian Penal Code and considering their continuous criminal activities committed by them by seeking the approval under Section 23(1) and 23(2) of the MCOC Act, the charge-sheet is filed against them. In view of Section 10 of the MCOC Act which is filed by the investigation officer, the trial Court has kept the trial in abeyance and no single witness is examined after 19.04.2024 i.e. a one year is already passed. Section 10 of the MCOC Act which states that the trial of any offence under this Act by a Special Court shall have precedence over the trial of any other case against the accused in any other Court (not being a Special Court) and shall be concluded in preference of the trial of such other case and accordingly the trial of such other cases shall remain in abeyance, the present trial of the applicant is kept in abeyance. Admittedly, there is

no progress in the trial as trial since 19.04.2024 i.e. almost one year has been passed.

9. Considering the submission, it is necessary to refer Section 10 of the MCOC Act, which reads as:

“10. Trial by Special Courts to have precedence. The trial of any offence under this Act by a Special Court shall have precedence over the trial of any other case against the accused in any other Court (not being a Special Court) and shall be concluded in preference of the trial of such other cases and accordingly the trial of such other cases shall remain in abeyance.”

10. The Hon’ble Apex Court, while interpreting *pari materia* provisions under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, interpreted Section 12 of the said Act. Said Section 12 of the said Act reads as under:

“12. Trial by Special Court to have precedence. The trial under this Act of any offence by Special Court shall have precedence over the trial of any other case against the accused in any other court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance.”

11. The Hon’ble Apex Court, in the case of ***Dharmendra Kirthal vs. State of Uttar Pradesh and anr***, ***reported in (2013) 8 SCC 368***, in paragraph No.32 has observed as under:

“32. The present provision is to be tested on the touchstone of the aforesaid constitutional principle. The provision clearly mandates that the trial under

this Act of any offence by the Special Court shall have precedence and shall be concluded in preference to the trial of such other courts to achieve the said purpose. The legislature thought it appropriate to provide that the trial of such other case shall remain in abeyance. It is apt to note here that “any other case” against the accused in “any other court” does not include the Special Court. The emphasis is on speedy trial and not denial of it. The legislature has incorporated such a provision so that an accused does not face trial in two cases simultaneously and a case before the Special Court does not linger owing to clash of dates in trial. It is also worthy to note that the Special Court has been conferred jurisdiction under sub-section (1) of Section 8 of the Act to try any other offences with which the accused may, under any other law for the time being in force, have been charged and proceeded at the same trial.”

12. Thus, from the aforesaid principles laid down by the Hon’ble Apex Court, it is crystal clear that legislative intent behind the said provisions was not that the proceeding of other offences must be kept in abeyance till conclusion of the trial under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986. Even, in the case of ***Mobin Iftikhar Zaidi vs. State Of U.P. and ors (Application under Section 482 No.27361 of 2011)***, it has been held as under:

“A perusal of the aforesaid provision reveals the legislative intent behind the said provision and its object was that the trial under the Gangsters Act should be given preference and the same should not get unduly delayed because of pendency of other cases in other courts. The legislative intention was not that the proceedings of other offences must be kept in abeyance till conclusion of trial under the Gangsters Act. Its intent was that the dates fixed in the other trials and in the case under the Gangsters Act should not clash together, in order to ensure that

the trial under the Gangsters Act does not get unduly delayed or hampered with and reaches to its logical conclusion at the earliest. It can not be the intention of the legislature that if a person is required in other cases in crimes of such heinous nature such as murder, dacoity, loot and rape etc, the trial of those offences should not proceed further till conclusion of trial under Gangsters Act. In view of the above, it is clear that the legislative intent is that the trial under the Gangsters Act need be given preference to other trial.”

13. By considering the above decisions of the Hon’ble Apex Court, the interpretation of the said provisions shows that it is not the proceedings in a matter under MCOC Act which has preference or precedence but it is the trial of the offence under the MCOC Act by the Special Court which will have precedence. It is thus apparent that Section 10 would come into play and be operative only in the event of the trial of an offence under the MCOC Act having commenced. If the trial has not yet commenced, there would be no question of Section 10 coming into play.

14. Thus, from the aforesaid discussion, it is clear that the Hon’ble Apex Court while interpreting the provisions explained the intention of legislature behind enacting Section 12 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 which is *pari materia* provisions of Section 10 of the MCOC Act that the case under the said Act should not be delayed and other case can also go on, but clash of dates should be avoided and for which purpose ‘kept in abeyance’ would mean if dates in both cases are common, the case under the said Act will get precedence.

15. The Hon'ble Apex Court, in the case of *Dharmendra Kirthal* (supra), held that "it is an apposite to note here that there is a distinction between an accused who faces trial in other courts and the accused in the special courts because the accused herein is tried by the Special Court as he is a gangster as defined under Section 2(c) of the Act and is involved in anti-social activities with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person. The accused persons under the Act belong to altogether a different category. The legislature has felt that they are to be dealt with in a different manner and, accordingly, the trial is mandated to be held by the special courts in an expeditious manner". It is further held that "the present provision is to be tested on the touchstone of the aforesaid constitutional principle. The provision clearly mandates that the trial under this Act of any offence by the Special Court shall have precedence and shall be concluded in preference to the trial of such other courts to achieve the said purpose. The legislature thought it appropriate to provide that the trial of such other case shall remain in abeyance. It is apt to note here that "any other case" against the accused in "any other court" does not include the Special Court. The emphasis is on speedy trial and not denial of it.

16. In the present case the Applicant is arrested on 15.11.2018. There is no dispute as to the fact that the involvement of the present applicant is a serious offence and the nature which deserves a consideration while exercising the discretion to release an accused on bail.

17. The Hon'ble Apex Court in the case of ***Union of India Vs. K.A. Najeed, reported in 2021 CriLR (SC) 267*** relied upon by the learned Counsel for the Applicant, wherein in para No.18 it is observed as under :

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

18. While exercising the discretion the consideration for grant of bail which Court has to take into consideration are, the nature and gravity of the offence, the possibility of the applicant fleeing away from justice, tampering of the witnesses etc. but at the same time, the factor of incarceration for indefinite period of an applicant as an under trial prisoner also deserves to be taken into consideration. Pending the trial, a person cannot be kept in custody for an indefinite period of time and it clearly a violation of the fundamental right enshrined in the Constitution and time and again, has been considered to be a justifiable ground to exercise the discretion

to release an accused. The Hon'ble Apex Court in which the same principle has laid down and the release of the accused on the ground of long incarceration and the impossibility of the conclusion of the trial in a near future is considered. In the present case, as the another charge-sheet is filed against the co-accused, the trial of the present applicant is kept in abeyance and that is for indefinite period i.e. till the disposal of the trial under the provisions of the MCOC Act. Admittedly, the present applicant is not the accused in the trial under the provisions of MCOC Act. He is kept behind bar as the other co-accused are facing the trial under the provisions of the Special Act. Admittedly, in the present case, the material witnesses are already examined including the informant and eye-witnesses. Some witnesses have not supported the prosecution case, but two eye-witnesses are already examined who have supported the prosecution case, therefore, the apprehension raised by the learned Additional Public Prosecutor regarding tampering of the witnesses has also not in existence as their evidence is already recorded in the trial. It is well settled that, deprivation of a personal liberty without ensuring the speedy trial is not in consonance with the Article 21 of the Constitution of India, access to justice and speedy trial has been well recognized as a hall mark of a liberty guaranteed in the Constitution and when timely trial is not possible the accused cannot be made to suffer further incarceration as he has already undergone significant period of the proposed sentence and in such circumstances, the discretion can be used in favour of the accused. In the above set of circumstances, the application of the applicant deserves to be allowed by imposing certain conditions. Accordingly, I

proceed to pass the following order.

ORDER

- i. The Application is **allowed**.
- ii. The Applicant – Shubham @ Ghubad S/o Dilip Wasnik in connection with Crime No.1306/2018 registered with Police Station, Jaripatka, Nagpur for the offences punishable under Sections 302, 324, 114 read with Section 34 of the Indian Penal Code, Sections 4 and 25 of the Arms Act, 1959 and Section 135 of the Bombay Police Act, 1951, be released on bail on furnishing P.R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- iii. The Applicant shall attend the trial on a regular basis and shall not apply for the exemption in any circumstances.
- iv. The Applicant shall attend the Jaripatka, Nagpur police station once in a week i.e. on every Sunday between 10.00 a.m. and 1.00 p.m. and the concerned Police Officer of the said police station shall record his presence.
- v. The Applicant shall furnish names and addresses of his two relatives along with their address proof and shall produce the same before the trial Court.

- vi. The Applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case and shall not in any manner involve and tampering of the evidence and in any criminal activities.

19. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)