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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 3956/2024, CRL.M.A. 32725/2024**

YOGESH@BABA

.....Petitioner

Through: Mr. Varun Dev Mishra, Mr. Mrinmoi
Chatterjee and Mr. Kirti Lal,
Advocates.

Versus

STATE (GOVT OF NCT OF DELHI)

.....Respondent

Through: Mr. Mukesh Kumar, APP for State
with Mr. Harpal Singh. Insp. and Mr.
Surendra, Insp., PS-Defence Colony.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

20.01.2025

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1. The Petitioner seeks regular bail under Section 483 read with Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 in FIR No. 107/2012, P.S. Defence Colony, South Delhi, for offences under Sections 394/397/302/411/120B of the Indian Penal Code, 1860 read with 3/4 the Maharashtra Control of Organised Crime Act, 1999.¹
2. The Petitioner has invoked two principal grounds for bail:
 - (i) Parity with co-accused: The Petitioner relies on the order dated 9th July 2024, whereby the Supreme Court granted bail to co-accused Vijay Kumar in the same case.



(ii) Violation of the right to a speedy trial under Article 21 of the Constitution of India: It is contended that the Petitioner has been in custody for over 11 years, and the trial remains far from conclusion. Out of the 140 witnesses listed by the prosecution, only 86 have been examined to date, causing undue delay and prolonging the Petitioner's incarceration.

3. Mr. Mukesh Kumar, APP for the State, strongly opposes the bail application. While conceding that co-accused Vijay Kumar has been granted bail by the Supreme Court, he contends that the Petitioner cannot claim parity without independently meeting the stringent requirements under MCOCA. He places reliance on the decision of the Supreme Court in *Jayshree Kanabar v. State of Maharashtra*² (decided on 2nd January, 2025) which emphasises that bail under MCOCA is contingent on the satisfaction of the twin conditions enshrined in Section 21(4) of the Act. Mr. Kumar emphasizes that the rigours of Section 21(4) mandate the Court to be satisfied that there are reasonable grounds to believe that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail.

4. The Court has carefully considered the aforementioned contentions. As observed, the co-accused, Mr. Vijay Kumar, has been granted bail by the Supreme Court, primarily on account of the prolonged period of incarceration, exceeding 11 years and 9 months, and the delay in concluding the trial. The order granting bail reads as follows:

“The petitioner is in custody with effect from 06.10.2012 for the last more than 11 years and 9 months in connection with FIR. No. 107 of 2012 registered with Defence Colony Police Station, District South Delhi. It is informed to us that out of total 140 witnesses, 80 witnesses have been

¹ MCOCA

² 2025 INSC 13



examined by this time and 60 witnesses are yet to be examined. Indeed, it is true that there are antecedents against the petitioner, however, the speedy trial is the right of the accused and in the present case, he is in custody since more than 11 and a half years and in the facts, the trial shall further take time to conclude.

Considering the period of custody and delay in conclusion of trial, we are inclined to allow this petition and direct to release the petitioner on bail on furnishing the suitable bail bonds and sureties and on such other terms and conditions as may be deemed fit by the trial court.

It is needless to observe that the petitioner shall appear on each and every date so fixed in trial until exempted and shall further operate in conclusion of trial without asking any adornment.

In case the petitioner does not appear on the date so fixed by the trial court or if he is involved in any new criminal case. The trial court, on moving an appropriate application by the prosecution, shall be at liberty to pass appropriate orders directing cancellation of bail, uninfluenced by this order.

Accordingly, and in view of the foregoing, this Special Leave Petition Stands allowed. Pending application(s), if any, shall stand disposed of."

5. The reasoning, as extracted above, does not rest on the merits of the case but rather emphasizes the constitutional right to a speedy trial under Article 21 of the Constitution, especially in light of the extended custody and the substantial number of witnesses still to be examined in the case. Upon juxtaposing the role of the present Petitioner with that of Vijay Kumar, the co-accused, it is evident that there exists no material distinction between the two. This fact remains undisputed, as no additional circumstances have been pointed out to distinguish the case of the Petitioner from that of the co-accused. While counsel for the Petitioner has underscored that the number of cases registered against the Petitioner is fewer than those against Vijay Kumar, this distinction is immaterial in the context of granting bail. The principle of parity applies squarely in the present case.



6. Further, the decision of the Supreme Court to grant bail to Vijay Kumar was based on the overarching considerations of excessive pre-trial detention and the Petitioner's fundamental right to a fair and speedy trial. On this issue, the Supreme Court in ***Jayshree Kanabar*** (supra), in fact, observes as follows:

*“6. There cannot be any doubt with respect to the position that since MCOCA is involved in this case on hand, the accused/respondent Nos.2 and 3 could not have sought for bail in exercise of the discretion available under Section 439, Cr.P.C., in the matter, in view of the rigours under Section 21(4) of the MCOCA. A perusal of the impugned order would reveal that the public prosecutor resisted the prayer for grant of bail and prayed the Court to consider the question of grant of bail taking into account the rigour of Section 21(4) of the MCOCA. In fact, the impugned judgment would reveal that the said contention was taken note of by the High Court. At the same time, it is a fact that the impugned order did not reflect such consideration as has been required in respect of matter involving offences under MCOCA in terms of the provisions thereunder as also the decisions rendered by this Court in respect of grant of bail. When there is an embargo put in by a specific provision under a special enactment in the matter of grant of bail in respect of offences allegedly committed thereunder, the power to grant bail should necessarily be subject to satisfaction of the conditions mentioned in such specific provision. In the case on hand, such a specific provision is contained under Section 21(4) of the MCOCA. The learned counsel for the petitioners would submit that bail was granted to respondent Nos.2 and 3 herein sans considering their entitlement in view of the decision of this Court in Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwan & Anr. 1 At the same time, the learned counsel appearing for the respondent would submit that even in the case of offences under Prevention of Money Laundering Act (for short, ‘the PMLA’) which carries similar rigour in the matter of grant of bail under Section 45(1), PMLA, this Court held that such stringent provisions for the grant of bail would not take away the power of Constitution of Courts to grant bail on grounds of violation of Part-III of the Constitution of India. **But we may hasten to add that a critical examination of the impugned order would reveal that bail was granted to respondent Nos.2 and 3 in the case on hand not on the ground of violation of Part-III of the Constitution of India and instead, the High Court has considered the sufficiency or otherwise of the evidence against them available on record.** There can be no doubt with respect to the position that materials collected during the investigation would not mature into evidence at the stage of consideration of an appeal and as such, the admissibility and evidentiary value are matters to be decided during the trial and are not*



matters for consideration at the present stage of the proceedings.

7. *In the light of the core contention raised by the appellant that the High Court had transgressed into impermissible area inasmuch as the question of sufficiency or otherwise and correctness of the prosecution case were considered while passing the impugned order instead of confining the consideration in regard to the question of satisfaction or otherwise of the stringent conditions in the matter of grant of bail where offences under MCOCA are involved. As noted above, grant of bail to respondent Nos.2 and 3 by the High Court is not on the ground(s) of violation of Part-III of the Constitution of India.*

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13. In view of the observations tantamounting to findings, as referred above and in the absence of consideration in the required manner, the application for bail moved by the respondent Nos.2 and 3 ought to have been considered in view of the involvement of the allegation of commission of offences under MCOCA in view of Section 21(4) of MCOCA, the impugned order invites interference. As noted hereinbefore, it is a fact that the grant of bail was not in exercise of power of the High Court as a constitutional Court on the ground of violation of Part-III of the Constitution. It is also a fact that the case on hand involves allegation of commission of offences of murder punishable under Section 302, IPC.”

(emphasis supplied)

7. Thus, in the opinion of the Court, the stringent conditions under Section 21(4) of MCOCA, while binding on courts exercising jurisdiction under Section 439 of the Cr.P.C., do not preclude constitutional courts from granting bail in cases where there is a demonstrable violation of fundamental rights under Article 21 of the Constitution. Such intervention is permissible when incarceration has become excessive, and the right to a speedy trial has been compromised. Given that the Petitioner has been in custody for over 11 years and the trial is far from conclusion, this case falls squarely within the ambit of constitutional scrutiny under Article 21. These considerations are equally applicable to the Petitioner, who has endured a comparable duration



of custody with no foreseeable conclusion to the trial. Therefore, the Petitioner's plea for bail merits consideration on these grounds.

8. To conclude, as per the nominal roll dated 3rd December, 2024, the Petitioner has been in custody for over 11 years, 11 months, and 20 days. The status report indicates that, out of 140 witnesses listed by the prosecution, only 86 have been examined thus far, leaving the trial far from conclusion. This prolonged incarceration, coupled with the delayed progress of the trial, constitutes a clear infringement of the Petitioner's right to a speedy trial under Article 21 of the Constitution. The co-accused, Mr. Vijay Kumar, facing similar charges, has already been granted bail by the Supreme Court on the grounds of extended pre-trial detention and the delayed conclusion of the trial. The role of the Petitioner is not materially distinguishable from that of the co-accused, and there is no justification to deny the Petitioner similar relief. Therefore, without delving into the merits of the case, and strictly in light of the protracted detention, the delayed trial, and the principle of parity, this Court finds that the Petitioner has made out a case for the grant of bail.

9. It is accordingly directed that the Petitioner shall be released on regular bail on furnishing a personal bond in the sum of INR 50,000/- along with one surety of the like amount to the satisfaction of the concerned Court/Metropolitan Magistrate, subject to the following conditions:

9.1 The Petitioner will not leave the country without prior permission of the Court.

9.2 The Petitioner shall provide permanent address to the Trial Court. The Petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in his residential address.



9.3 The Petitioner shall appear before the Court as and when the matter is taken up for hearing.

9.4 The Petitioner shall provide all mobile numbers to the concerned IO, which shall be kept in working condition at all times. The Petitioner shall not switch off his phone or change his mobile number without prior intimation to the concerned IO.

9.5 The Petitioner will report to the concerned IO on the second and fourth Friday of every month, at 4:00 PM, and will not be kept waiting for more than an hour.

9.6 The Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.

10. Needless to state, observations, if any, concerning the merits of the case are solely for the purpose of deciding the question of grant of bail and shall not be construed as an expression of opinion on the merits of the case.

11. In case the petitioner violates any of the aforementioned conditions, the trial court, on appropriate application moved by the prosecution, shall be at liberty to pass appropriate orders directing cancellation of bail, uninfluenced by this order.

12. A copy of the order be sent to the Jail Superintendent for information and necessary compliance.

13. With the foregoing directions, the present application is disposed of. Pending application(s), if any, are disposed of as infructuous.

SANJEEV NARULA, J

JANUARY 20, 2025/Nk