

Order below Exh. 60 in Spl. MCOCA Case No. 737/2021

The accused **Bala @ Jagdish Popat Darade** has been arrested on 01/04/2021 in connection with C.R.No. 430/2020, registered in Bhigwan Police Station under Sec. 307, 397, 452, 427, 506 r/w 34 of IPC, under Sec. 3 r/w. 25 of the Arms Act and under Sec.3(1)(ii) and 3(4) of MCOCA. He has filed this application for bail under Sec. 439 of Cr.PC. He contends that this is his first bail application and no other application is pending in any other Court.

2. The indictment of the accused as it reveals from the case papers is that on 30/11/2020 at about 10.23 p.m. this accused and co-accused came to the house of informant Sanjay Tukaram Thorve at Mhasobachi wadi, Tal. Indapur, Dist. Pune by white colour four wheeler and broke open the door of his house and this accused, co-accused Vijay Gophane and another unknown person assaulted the informant by iron rod asking him to withdraw the crime registered against them in Baramati city and taluka police stations. They took away the wrist watch and some amount and also pressed throat of his wife and snatched gold finger ring from her. Other two unknown persons were standing in the dark in front of the house of the informant and they were instigating to kill the informant. The informant and his wife started shouting and the brother and his wife came with torch and at that time this accused took out a pistol and pointed it at the head of informant and threatened him that he remained alive now but he will shoot him on the next time. All the accused thereafter went away by their four wheeler.

3. Heard Shri Pande, the learned advocate for the accused and Shri Kavedia, the learned SPP. The provisions of MCOCA have been applied

against the accused and because of this the accused is behind the bar since 01/04/2021. The applicant contends that no incident as alleged has been taken place and he is falsely implicated by the informant due to previous history. The applicant is not the member of any organized crime nor involved in any continuing unlawful activity. The sanction for prosecution of this accused under MCOCA is mechanical and without application of the mind. The applicant never assaulted nor threatened him pointing a pistol at him. The informant has made exaggerated statements in that regard. The accused is the local resident. He will not flee away and will abide all the conditions those would be imposed by this court.

4. The learned advocate for the applicant submits that the co-accused Vijay Gophane is released on bail by the Hon'ble Supreme Court. A copy of the bail order is placed on record and it discloses that the charge was not framed and the reasons given for failure to frame charge were not found to be justifiable. It was observed that merely because co-accused was not remaining present before the court, that accused cannot be kept behind the bar. He was therefore released on bail. The learned advocate submits that the ground of parity has been accrued to this accused as both the accused had similar role in the present crime.

5. The learned advocate has placed reliance on the judgment in *Akash Chandlia vs State of Maharashtra, [Cri.B.A. No. 1779/2023, decided on 26/09/2023]* wherein the co-accused was released on bail and the bail was sought on the ground of parity. The trial court was ordered to conclude the trial in a time bound manner but it was not concluded. Thus, considering the mandate of Article 21 of Constitution the accused was released on bail. *In Manish Sisodiya vs Director of Enforcement, [2024*

SCCOnline 1498], the Hon'ble Apex court reiterated the principle that bail is rule and jail is exception, further observed that over a period of time, the trial courts and High Courts have forgotten a very settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in the matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach.

6. The Investigating Officer has opposed this application by filing say (Exh. 70). The learned APP submits that this accused is the leader of his organized crime syndicate and he has indulged in continuing unlawful activities. A list of the crimes registered against him has been given and total 12 crimes have been registered against this accused in different police stations and most of them are under Section 454, 380 and 3(25) of the Arms Act. This accused had pointed pistol at the informant having no licence to possess such arm. Merely because the co-accused Vijay Gophane has been released on bail, the ground of parity is not available to this accused as the role played by him is different from that accused. If this accused is released on bail, he will again indulge in such criminal activities, he will pressurize the prosecution witnesses and even commit more serious offences. He therefore submits that this application be rejected.

7. Having heard both the sides and on going through the investigating papers it appears that this accused had criminal antecedents. It was alleged that the informant was assaulted asking him to withdraw the cases filed against the accused. The chart of the crimes submitted in the charge-sheet shows that this is the only offence committed by all the accused commonly. There are 12 crimes registered against this accused out

of which five were in his individual capacity, five were committed alongwith co-accused Vijay Gophane who is released on bail by the Hon'ble Supreme Court. The crimes registered against other accused were in their individual capacity and not with this accused. Thus, it would be a question of fact whether this offence was committed by this accused as the member of organized crime syndicate.

8. The charge against the accused is now framed. However, the trial is not yet commenced because of pendency of this application. Considering the list of witnesses the trial would take considerable time to conclude. It was general allegation of the informant that this accused and co-accused Nos. 2 and 3 assaulted him by iron bar and snatched his watch, some amount and gold finger ring of his wife. He has not stated about the specific role of each accused. It is alleged that this accused pointed a pistol at the informant and threatened him to kill him on the next time. This allegation appears to be prima facie improbable. If this accused had come with a loaded pistol with an intention to kill the informant, there was no reason for him to postpone his killing on a subsequent occasion.

9. The role of co-accused Vijay Gophane and this accused appears to be similar. Co-accused was released on bail on the ground of delay in trial. Now even though the charge is framed, it is not possible to conclude the trial in near future. Under the circumstance, the anguish expressed by the Hon'ble Apex Court for committing breach of the rule of bail and not jail has to be seriously taken into consideration. I am of the view that this accused is languished in jail since 01/04/2021 and the trial of the case is not likely to be concluded, the ground of parity has been accrued to this

accused and now he would be entitled to be released on bail. Hence, the order.

ORDER

1. Bail application is allowed.
2. The accused **Bala @ Jagdish Popat Darade**, who was arrested on 01/04/2021 in connection with C.R.No.430/2020, registered in Bhigwan Police Station under Sec. 307, 397, 452, 427, 506 r/w 34 of IPC, under Sec. 3 r/w. 25 of the Arms Act and under Sec.3(1)(ii) and 3(4) of MCOCA be released on bail on his furnishing P.R. of Rs.30,000/- with surety of the like amount on following conditions-
 - a) The accused shall not pressurize the prosecution witnesses and shall not indulge in any criminal activity.
 - b) The accused shall submit his address proof and phone details as well as phone details of his two close relatives.
 - c) The accused shall attend Bhigwan Police Station on 5th day of every month and maintain record of such attendance, which shall be signed by PSO of that police station and shall be produced before this Court as and when required.
3. Violation of any of the condition may intel a ground for cancellation of bail.
4. Bail application stands disposed of accordingly.

Pune
Date: 04/09/2024

(S.R. Salunkhe)
Special Judge (MCOCA), Pune.