

*MCOCA Special Case No. 29/2023.
Aadesh @ Aadhya Khairkar V/s. State.
(CNR No. MHYA010005112023)*

**-: FINAL ORDER BELOW EXH.100 IN SPECIAL CASE
BEARING NO.29/2023. :-
(Delivered on this 20th Day of April 2024)**

1. Applicant/accused invoked jurisdiction of this Court vide Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail in connection with C.R. No.590/2022 registered with Police Station Yavatmal City, Dist. Yavatmal, for the offence punishable U/sec. 307, 384, 143, 147, 148, 149, 506 and 120-B of the Indian Penal Code, under sections 3, 25, 27, 35 of the Arms Act, under section 135 of the Maharashtra Police Act r/w sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (MCOCA Act).

2. Post filing of the final report vide section 173 of the Code of Criminal Procedure, the applicant accused herein moved this Court with instant first bail application. When the case is stand over for further due deliberation the applicant herein knocked the doors of this Court and implored for his release on suitable bail.

Bonsai facts are as follows :-

3. The informant Pritesh Jaiswal hails from Yavatmal and doing his business. M.P.Jaiswal wine Bar situated at *Chhoti Gujar* Yavatmal belongs to his father. On 03.09.2022 the informant had been to said shop bar for verifying the accounts. On the same night the applicant/accused along-with other co-accused had been to said wine Bar and were enjoying liquor. At about 10:30 PM the informant asked them about the bill payment. The co-accused Rohit Jadhav refused for paying the same and thus quarrel erupted in *inter-se* the informant and accused persons. The accused persons threw glasses on the person of the informant. So also the accused Rohit Jadhav hurled filthy abuses and slapped the informant with death threats.

During said brawl the co-accused Shaikh Alim fired gun shot in the air whereas Shaikh Imran Shaikh Salim raised knife upon the informant and assaulted him. Applicant accused assaulted the informant with sticks. In the same incident, applicant accused demanded ransom amount of Rs.5000/- per month from the informant by giving him death threats. Thus, all accused with their common object formed an unlawful assembly and created terror so also assaulted the informant in such manner which could have caused his death. With all above allegations report was lodged. Crime was registered. Amid investigation applicant accused was arrested, interrogated and taken into MCR on 24/09/2022 so on till date. Shortly the provisions of MCOCA Act were invoked against all accused. In the backdrop, instant application for bail.

4. *Per* accused he is innocent. He is falsely implicated in the crime. His custodial interrogation is not required. Entire set of allegations in FIR are false and concocted. As such further physical custody of present accused is not required for any sort of custodial interrogation. Nothing is to be recovered or discovered at the instance of the applicant. As such there remains nothing to be interrogated with him. Investigation in instant crime is already over and Charge-sheet is filed before the court. He is ready to cooperate in the trial. He is also ready to attend trial regularly. It is further urged that co-accused are already released on the bail. The rule of parity is applicable. On all these counts he implored for conferring suitable bail and oblige.

5. *Negating above stance* the prosecution raised stiff objection for freeing of the accused with their reply below Exh.107. According to them, offences leveled against the accused are serious in nature. Alleged offence are serious and contemplate heavy penalty for the same. If he is released, then there are likely chances that he may tamper the evidence. He is part of the conspiracy and with their oblique motive they all have assaulted the informant. He has active involvement in the crime.

Applicant/accused is a hardened criminal. Several offences are pending against him. If he is conferred with bail, he would pressurize the informant and witnesses. On the count of recurrence as well as gravity of crime, prosecution prayed for rejection of the application in *limine*.

6. Heard Id. Advocate L.S. Deshmukh for the applicant/accused and Id. APP A.S. Verma for the prosecution at length.

7. Mused over say, copy of FIR, and other documents pertaining to investigation keenly.

8. Before adverting towards the submissions by the parties relating to the grant of bail it is epochal to look into the prime considerations of the bail vide section 439 of the Code of Criminal Procedure. The Hon'ble Supreme Court has, in catena of judgments, outlined the considerations on the basis of which discretion under Section 439 of the Code of Criminal Procedure has to be exercised while granting bail. A useful reference on the point can very well be made from magnificent verdict of the Hon'ble Supreme Court in the case of ***Gurcharan Singh v. State (Delhi Administration)*, (1978) 1 SCC 118**. Certain important factors that are always considered while exercising discretion for conferring bail which *inter-alia* relates to prima-facie involvement of the accused, nature and gravity of the charge, severity of the punishment, and the character, position and standing of the accused. A gainful reference can also be made from the verdict of Hon'ble Supreme Court in the case of ***State of U.P. v. Amarmani Tripathi*, (2005) 8 SCC 21**. The above factors do not constitute an exhaustive list. The grant of bail requires the consideration of various factors which mainly depends upon the specific facts and circumstances of the case before the Court. There is no strait jacket formula which can ever be prescribed as to what the relevant factors could be. In the light of said legal scenario present application seeking regular bail deserves due deliberation.

9. Offence punishable vide 307, 384, 143, 147, 148, 149, 506 and 120-B of the Indian Penal Code, under sections 3, 25, 27, 35 of the Arms Act, under section 135 of the Maharashtra Police Act r/w sections 3(1)(ii), 3(2) and 3(4) of MCOCA Act are alleged against the accused. They are grievous in nature. The alleged offences contemplate punishment up to imprisonment for life.

10. At the outset, it is epochal to note here that in instant crime charge sheet in placed before this Court and the case is stand over for appearance/production of the accused wherein, instant application is moved for enlargement of the accused on suitable bail. *Having scanned charge-sheet it is crystalline that investigation as regards present accused is concerned is already over. Thus, as of now nothing is left to be recovered or discovered at his instance.*

11. Apparently offence vide sections 3(1)(ii), 3(2) and 3(4) of MCOCA Act are alleged against present accused.

12. The question of grant of regular bail to the applicant accused has to be determined on the facts and circumstances of the present case by exercise of judicial discretion in accordance with relevant statutory provisions and settled principles of law.

13. In view of section 21(5) of the Maharashtra Control of Organized Crime Act, 1999- Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the Court that he was on bail in an offence under this Act, or under any other Act, on the date of the offence in question. It is not the contention of the Learned APP that applicant accused was on bail in any case registered under the provisions of MCOCA when this offence was committed. Thus, there is no bar of section 21(5) of the Maha. Control of Organized Crime Act, 1999, escalating for entertaining present application.

14. While conferring bail upon the accused, as per section 21(4) (b) of the Maharashtra Control of Organized Crime Act, 1999 the Court has to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. If these two conditions are fulfilled then only bail can be granted for offence under MCOCA.

15. *Firstly*, it has to be seen whether the applicant accused is a part of 'organized crime syndicate' as defined under section 2(1)(f) of MCOCA. Upon perusal of the crime register extract, though it is seen that few offences are registered against the applicant accused prior to this offence, the Learned APP has not shown any similarity between any pending cases and the present offence. The Learned APP has not shown any *nexus* between any past crime and present case. The Learned APP has not shown any case by which it can be infer that the applicant was ever a member of organized crime syndicate or of any similar gang. *Secondly*, it has to be seen whether the offence committed falls under the definition of 'organized crime' as defined under section 2(1)(e) of MCOCA. In the present case, the informant asked the accused to pay the bill for the liquor drank by them. This lead to the dispute and consequent assault. It is crystal clear that the incident had happened on the spur of the moment and there was not pre mediation. It is alleged that the applicant accused and accused No.02 Rohit Jadhav demanded the amount of Rs.5,000/- as protection money. The protection amount was demanded after the dispute for payment of bill arose. Said extortion can not be held to be pecuniary gain as contemplated under 'organized crime'. It is simpliciter extortion. *Thirdly*, it has to be seen whether the accused has committed continuing unlawful activity as defined under section 2(1)(d) of MCOCA. The Learned APP has not shown any nexus between any past offence and the present offence. The prosecution has not shown any similarity between the *modus operandi* of any offence and present offence. The accused is not convicted of any offence so far.

16. For the aforesaid reasoning, it is not established *prima facie* by the prosecution that the applicant is a member of organized crime syndicate and he committed organized crime with the objective of gaining pecuniary benefit and he continued indulging in unlawful activities. Thus, *Prima facie* there are reasonable grounds for believing that the applicant accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

17. Ld. Advocate of the accused Mr. Lalit Deshmukh with vim and vigor did submit and relied upon *Bail Application No.2241/2018 Shri Girish Kumaran Nayar Vs. State of Maharashtra Hon'ble High Court, Bombay* wherein it was held that *criminal antecedent of the applicant were placed on record. However, which chargesheet were considered for his prosecution under MCOCA was not clear. Nexus between past criminal activities and present crime is also not established. Nothing to show that past offences were committed by applicant as member of or on behalf of organized crime syndicate. Mere proof of past chargesheet is not enough. Investigation is already over. The applicant is in custody since last 4 years. Trial not likely to commence within reasonable time. Bail was granted.* In present case, the prosecution has not shown any offence committed by the applicant as member of or on behalf organized crime syndicate. Accused is behind bars since last 01 Year 5 months. *Muddemal* is not deposited by the prosecution yet. Though charge is framed yet the trial is likely to take long to commence. Since facts of cases are similar the above ratio is applicable.

18. Up-shot of factual scenario manifested above it is crystalline that *prima facie* the attribution of provisions of MCOCA agaisnt applicant accused are having little shades of doubt but only the provisions of IPC and other Acts are attracted. ***This being prima facie analysis only for the just decision of the bail application and whether such provisions of MCOCA would be tenable and proved or not is subject matter of the trial and it is not the stage for considering merits and demerits of the same.***

19. Rule of parity is also next point for deliberation. It seems that except co-accused No. 3 all other accused are already released on the bail. They are having more or less likewise role in the crime. Though provisions of MCOCA were invoked against them, they are conferred with the bail. In the same manner, even if the applicant is ascribed with similar role, he deserves bail in the same manner.

20. Now, averting towards remaining set and bunch of allegations, Bare perusal of material placed on record it reveals that the role attributed to the applicant is that when the co-accused Rohit Jadhav refused for paying liquor bill quarrel erupted *inter-se* the informant and accused persons. During said brawl the applicant assaulted the informant by sticks and the co-accused fired gun shot in the air so also demanded ransom amount of Rs.5000/- per month from the informant as protection money by giving him death threats. The role attributed towards the applicant is less petite than other co-accused. As of now the said *Desi Cutta* is already recovered at the instance of the accused. It is not the case that he opened said fire upon the informant. It is not alleged that applicant as such assaulted the informant. Till date it is not shown by the prosecution the specific notification issued by the collector Yavatmal in reference with the Arms Act applicable to the District Yavatmal. Now there is nothing to be discovered and recovered at the instance of the applicant. Now the informant is discharged from the hospital and following his daily pursuit. As such further incarceration of the applicant accused for any sort of reasons does not require for specially when he is ready to attend trial without fail. To protect the complainant and witnesses certain terms and conditions can be imposed on the accused. As the final report in the crime has already been placed, so what is principally required to be seen is as to whether the applicant's presence can be procured during the trial of the case or not. The accused/applicant is permanent resident of Yavatmal. He is having his roots therein. ***There are no likely chances that he would flee from justice.*** Having pore over entire material placed on record, I am of the opinion that the presence of the accused for

facing trial can be secured and there seems no hurdle in the same. As regards object and motive of such ill act is concerned it is a matter of merit. ***It would not be worthy to go into the orbit of motive and intention, at this stage.*** Thus, merely on the basis of aforesaid evidence, it is not desirable to junk instant bail application outrightly.

21. In addition, now as such nothing is remained to investigate anymore and ***the accused /applicant is incarcerated for more than last 01 year 05 months.*** The alleged weapon is already recovered. As of now nothing is left to be recovered or discovered at the instance of this accused. Presence of accused behind bar for any sort of custodial interrogation does not require for. The accused is ready to attend court regularly. As such, anxiety expressed by the prosecution as regards gravity of crime is concerned, it can be taken care of by putting stringent condition upon him. The elements of further investigation are not shown by the prosecution. More-so, ***it is not aptly shown by the prosecution that present accused by virtue of his status may tamper with evidence.*** In addition, as of now other co-accused are already released on the bail. There is no complaint against them. Thus, there are no potent objection to disown the applicant accused with reliefs of bail.

22. Utmost recently, the Hon'ble Supreme court observed in the case of ***Mohd Muslim @ Hussain V/S State (NCT Of Delhi) Criminal Appeal No. (S) Of 2023 (@ Special Leave Petition (CRL.) No.S). 915 Of 2023) dated March 28, 2023,*** that

“ 23. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal (also see Donald Clemmer’s ‘The Prison Community’ published in 1940). Incarceration has further deleterious effects – where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts

therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.”

Precisely, the Hon'ble Supreme Court unfolded the evil impact of the long incarceration and enlarged the concern accused on bail by pressing upon the constitutional right of personal liberty and speedy trial of the accused persons. The Hon'ble court reasserted the observations made by the Court in the celebrated verdict of ***Abdul Rehman Antulay V/s R.S.Nayak ((1992) 1 SCC 225)***

23. Indeed, it is well settled legal proposition, while dealing with regular bail application, is that the object of the bail is to secure appearance of the accused at the time of his trial by reasonable amount of bail. Its object is neither punitive nor preventive. Application of similar object and scanning instant application under same object is holding significance. A useful reference on the point can be made from the law guided by the Hon'ble Supreme Court in the Case of ***Sanjay Chandra V/s CBI reported in (2012 AIR(SC)830)***. In present case there are no special reasons put-forth before this court that may lead to raise exception to aforesaid object. In ***P. Chidambaram V/s Directorate Of Enforcement reported in (2020(13)SCC 791)*** the Hon'ble supreme Court repeatedly highlighted the proposition that Bail the rule and jail the exception. A gainful reference on the point can also be made from the recent landmark verdict delivered by the Hon'ble Supreme Court in the case ***Satender Kumar Antil V/s CBI ((2022) 10 SCC 51)***

24. While enlightening on the aspect of bail in other acts the Hon'ble Court expounded in loud manner in the case of ***Uttamsingh V/s. State of Himachal Pradesh (2021 All MR (Cri) Journal 75)*** that the object of the bail is to secure the attendance of the accused in the trial

and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. In instant matter there is no such anxiety that the accused may flee from justice and remain absent for the trial. Certainly, the legal position tilts in favour of the applicant accused.

25. As of now, the Final report is filed in the instant crime. The case is stand over for further due deliberation cum trial. It will take time to commence and conclude the trial. Presence of accused behind bar for any sort of custodial interrogation does not require for. The accused is ready to attend court regularly. Resultantly, in the light of aforesaid scenario specially in view of legal verdicts elucidated above, I believe, the applicant accused deserves bail. All these factors too enlarges the scope to release the applicant on bail under Section 439 of the Code of Criminal Procedure as well.

26. Precisely alleged offences are grave and serious but, it would be just and proper to admit the applicant to bail, as a normal rule of criminal jurisprudence is *bail and not the jail*. There are no vital attributions against him, thus he deserves approval for bail.

27. Apogee of all above facts, foregoing peculiarities and factual scenario, speaks in clarion manner that the application needs to be allowed, however, by putting certain restrictions. In instant case when the investigation as regards instant accused is concern is over by all means, so also when he is committed to attend the I.O. & Court and follow terms and conditions, imposed if any, I believe there is no hurdle for bail. Ultimately, owing to preceding distinctive features, the application deserves approval, however, by putting certain conditions.

28. To pen down omega, I pass the following order.

ORDER

1. Application is allowed.
2. The accused applicant– Aadesh @ Aadhya Anil Khairkar, in connection with Crime No.590/2022 registered with Yavatmal City Police Station, District Yavatmal, for the offence punishable U/secs. U/secs. 307, 384, 143, 147, 148, 149, 506 and 120-B of the Indian Penal Code, under sections 3, 25, 27, 35 of the Arms Act, under section 135 of the Maharashtra Police Act r/w sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (MCOCA Act)., be released on **P.B. of Rs. 1,00,000/- with One solvent surety in the like amount**, on the following terms and conditions;

Conditions

- (i) The accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the Court or to any police officer.
- (ii) He shall attend each and every date before this court, failing which his bail shall be treated as cancelled without any further reference to this court.
- (iii) The accused not to indulge in any illegal activities or in committing the offence of like nature.
- (iv) He shall not foster any interaction with the Informant or with any of his relatives cum prosecution witnesses.
- (v) He shall furnish his cell number and intended address of his residence to the concerned investigating officer.

- (vi) His surety shall produce verified copy of his / her Aadhaar Card, Contact Details, Copy of Bank Passbook and other Address Proofs.
- (vii) He shall not enter into the territorial jurisdiction of entire Yavatmal District, (except for attending Court proceedings), for a period of one year from the date of his actual release.

Date : 20/04/2024.

(Amit Anant Laulkar)
Judge, Special Court,
Yavatmal.