

Javed Shabuddin Khan @ Papa Khan vs The State Of Maharashtra on 15 July, 2024

Author: N. J. Jamadar

Bench: N. J. Jamadar

2024:BHC-AS:28272

501&16-BA3191-2023&2270-2024.DOC

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

SANTOSH
SUBHASH
KULKARNI

Digitally signed by

SANTOSH
SUBHASH
KULKARNI

Date: 2024.07.19

10:11:14 +0530

BAIL APPLICATION NO. 3191 OF 2023

Amjad Rais Redkar

...Applic

Versus

The State (at the instance of Versova Police
Station)

...Respondent

WITH

BAIL APPLICATION NO. 2270 OF 2024

Javed Shabbudin Khan @ Papa Khan

...Applic

Versus

The State of Maharashtra

...Respondent

Mr. Milan Desai, a/w A. Shaikh, for the Applicant in
BA/3191/2023.

Ms. Tripti Shetty, for the Applicant in BA/2270/2024.

Ms. Mahalaxmi Ganapathy, APP for the State.

PSI Mr. Dhotre, A.E. Cell, DCB, CID, Mumbai, present.

CORAM: N. J. JAMADAR, J.

DATED: 15th JULY, 2024

ORDER:

-

1. Heard the learned Counsel for the applicants and the learned APP for the State.

2. The applicants, who are arraigned in MCOC Special Case No.1513 of 2022 arising out of D.C.B., C.I.D., CR No. 150 of 2022 (original CR No. 540 of 2022 registered with Versova Police Station) for the offences punishable under Sections 120B, 386, 506 (2) read with Section 34 of the 501&16-BA3191-2023&2270-2024.DOC Indian Penal Code, 1860 ('the Penal Code') and Sections 3 (1)

(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 ('the MCOCA), have preferred these applications to enlarge them on bail.

3. At the outset, the learned Counsel for the applicants submits that the applicants are entitled to be enlarged on bail on the principle of parity as the co-accused Sameer Taj Khan (A4), Firoze Shaikh (A7) and Ajay Gosalia (A5) have been released on bail by this Court by an elaborate order dated 10th April, 2024, wherein this Court has also adverted to the role of the applicants. As the applicants are similarly circumstanced, they are entitled to the same dispensation.

4. I have perused the material on record. The prosecution case as noted by this Court in order dated 10 th April, 2024 in BA/3191/2023 and the reasons which weighed with this Court to enlarge the co-accused on bail deserve to be extracted. Paragraphs 3 and 5 of the said order encapsulate the prosecution case and the opposition of the prosecution to the prayer of bail. They read as under:

"3. The prosecution case can be stated in brief as under:

(A) The first informant deals in the business of catering and gold. A year prior to the lodging of the report, he became acquainted with Riyaz Ahmed Bhati @ Riyaz Ahmed Siraj Ahmed Bhati (A1). A party to celebrate the 501&16-BA3191-2023&2270-2024.DOC birthday of Riyaz Bhati (A1) was arranged on 19th February, 2021 at Sahara Star Hotel, Vile Parle, Mumbai.

The first informant attended the said party. A number of persons had also attended the said party. In the said party, Riyaz Bhati (A1) introduced the first informant to Mohammed Salim Iqbal Qureshi @ Salim Fruit (A2), as the co-brother of dreaded gangster Shakil Babu Mohiddin Shaikh @ Chhota Shakil (wanted accused) and the person who was managing the affairs of wanted accused in Mumbai.

(B) First informant used to play cards at the club run by Shekhar Shetty @ Shekhar Anna at Matunga. Salim Fruit (A2) also played cards in the said club. In a game, Salim Fruit (A2) lost but refused to pay the money flaunting his relationship with wanted accused. A few days later, Salim Fruit (A2) won the game and claimed that an exorbitant amount of Rs.62,00,000/- was due and payable by the first informant to Salim Fruit (A2). After a week, Salim Fruit (A2) started to demand the money from the first informant and also gave threats. Putting the first informant in fear, Salim Fruit (A2) made the first informant deliver a Range Rover Car bearing No. MH-01-BY-7120. An amount of Rs.30,00,000/- only was adjusted against the said car. Salim Fruit (A2) continued to

demand the balance amount of Rs.32,00,000/-by giving threats of dire consequences. The first informant transferred an amount of Rs.7,00,000/- in the accounts indicated by Salim Fruit (A2).

(C) National Investigation Agency (NIA) arrested Salim Fruit (A2) on 4th August, 2022. On 8th August, 2022, the first informant met Riyaz Bhati (A1). The latter attempted to dissuade the first informant from disclosing true facts to the investigating agency by threatening that if he did so, he would be inviting the wrath of the entire Dawood gang and the first informant would repent. (D) The first informant, thus, approached Versova police station and lodged a report against Riyaz Bhati (A1) and Salim Fruit (A2) to the effect that they, in pursuance of a conspiracy attempted to extort an amount of Rs.62,00,000/-, he was divested of a Car and made to transfer an amount of Rs.7,00,000/- in the account of witness 'W' at the instance of the accused. (E) In the supplementary statement, the first informant further alleged that Riyaz Bhati (A1) had asked him to bear the expenses of the birthday party held on 19th February, 2021. When the first informant requested Riyaz Bhati (A1) to repay the amount, spent by the first informant for the said party, Riyaz Bhati (A1) threatened the first informant by giving a reference of his friendship with Salim Fruit (A2). The latter also asked the first informant to forget the said amount.

501&16-BA3191-2023&2270-2024.DOC (F) During the course of investigation, it transpired that the applicants, Riyaz Bhati (A1) and Salim Fruit (A2) and the co-accused Javed Shabuddin Khan @ Papa Pathan (A6) and Amjad Rais Redkar (A3) had hatched a conspiracy in the birthday party of Riyaz Bhati (A1) to extort a huge sum of money from the first informant. It further transpired that the applicants and the co-accused were members of an organized crime syndicate, of which Chhota Shakil (the wanted accused) was the leader. The applicants and the co-accused had been indulging in continuous unlawful activity with a view of obtaining a pecuniary advantage. Thus, after obtaining the prior approval of the competent authority under Section 23 (1) (a) of the MCOCA, 1999, the offences punishable under Sections 3 (1)(ii), 3(2), 3(4) of the MCOCA, 1999 were added. The applicants and co-accused were arrested.

.....

5. An affidavit-in-reply is filed in each of the applications opposing the prayers for bail. The thrust of the resistance put forth by the prosecution is that the evidence collected during the course of investigation revealed that the offences were committed by the applicants and the co-accused as members of the organized crime syndicate headed by the wanted accused

- Chhota Shakil, by taking active participation in the said offences with the motive of pecuniary gains and other advantages. The applicants and the co-accused have been creating terror in the minds of the businessmen. Reference is made to the numerous cases registered against Chhota Shakil, the wanted accused, and Riyaz Bhati (A1), to show that the applicants and the co-accused were indulging in continuous unlawful activity. To buttress this charge the prosecution banks upon the statements of witnesses, to which reference would be made a little later.

5. The reasons, which weighed with this Court in exercising the discretion in favour of the co-accused read as under:

"25) On the aforesaid touchstone, if facts of the case at hand are examined, albeit, prima facie, it becomes evident that two prime circumstances pressed into service against the applicants are that : one, they had attended the birthday party of Riyaz Bhati (A1) and, in the said birthday party, a conspiracy was hatched to extort money 501&16-BA3191-2023&2270-2024.DOC from the first informant. Two, pursuant to the said conspiracy, money was, in fact, extorted from the first informant and Salim Fruit (A2) had directed his associates to distribute the proceeds of the crime amongst the co-accused including the applicants.

26) The first circumstance that the applicants had attended the birthday party of Riyaz Khati (A1), in itself, prima facie, does not seem to have any incriminating tendency. By the own showing of the prosecution, more than 200 persons had attended the said birthday party.

The allegations that, in the said birthday party, the conspiracy was hatched to extort money from the first informant is sought to be substantiated on the strength of the statement of witness 'U' who claimed to have overheard the conversation.

27) Witness 'U' stated that, in the said party, the applicant - Ajay Gosalia (A5) told him that the birthday party was arranged by the first informant, Riyaz Bhati (A1) had instructed Ajay Gosalia (A5) to keep a watch on the first informant, Salim Fruit (A2) stated that the first informant could be their next target and Applicant - Sameer Khan (A4) and the co-accused seconded Salim Fruit (A2). In the statement recorded under Section 164 of the Code of Criminal Procedure, 1973, witness 'U' stated that in the said party, there was a discussion amongst the applicants and the co-accused that the first informant was financially strong and he could be pursued.

28) Witness 'H' stated that he had also attended the party. Upon being told that the said party was arranged by the first informant, the applicants, and the co-accused Salim Fruit (A2), Amjad Redkar (A3) and Javed Khan @ Papa Pathan (A6) had stated that he shall see what happens in the future and huge property could be extorted from the first informant.

29) Prima facie, the aforesaid statements lack the element of certainty as to the person, who was alleged to be a confederate in the conspiracy. The witnesses claimed to have overheard the conversation. The statements, therefore, prima facie do not appear to be sturdy enough to bear the weight of the accusation of criminal conspiracy. The aspect of the probability also deserves consideration as more than 200 persons had allegedly attended the said party, in which the conspiracy was allegedly entered into.

30) The second circumstance of the applicants being the beneficiaries of the alleged extortion rests on the statements of two witnesses. Witness 'W' stated that on 8th October, 2022, Salim Fruit (A2) had asked him to share his bank account details. On the same day, a sum of Rs.2,00,000/- was credited to his account from the 501&16-BA3191-2023&2270-2024.DOC account of the wife of witness 'S.' By 20th May, 2022, a sum of Rs.3,00,000/- was deposited in the account of the witness 'W'. Salim Fruit (A2) asked him to withdraw the said amount and distribute the same amongst the

applicants and the co-accused Amjad Redkar (A3) and Javed Khan @ Papa Pathan (A6). The said witness 'W' asked Salim Fruit to give the account numbers of the applicants and the co-accused to transfer the said amount. Thereupon, Salim Fruit (A2) asked him to transfer the money to the account of witness 'J'. Accordingly, he had transferred some amount to the account of witness 'J' and some part of the amount was paid in cash to Salim Fruit (A2). In the statement recorded under Section 164 of the Code, 1973, witness 'W' did not state that Salim Fruit (A2) had asked him to distribute the amount amongst the applicants and the co-accused.

31) Witness 'J' stated that Salim Fruit (A2) had asked him to distribute the amount, which was credited to his account by witness 'W', amongst the applicants and the co-accused Amjad Redkar (A3) and Javed Khan @ Papa Pathan (A6). However, he had declined to do so. Instead, he had paid the said amount in cash to Salim Fruit (A2).

32) The aforesaid clear and categorical statement of witness 'J' gives heft to the submissions on behalf of the applicants that there is no material to indicate that any amount was, in fact, paid to the applicants and the co-accused, as alleged. It is for this reason, in the affidavit- in-reply, it is contended on behalf of the prosecution that the witnesses have stated that they were to deliver the amount to the applicants and the co-accused.

33) It is pertinent to note that witness 'J' categorically states that he had delivered the amount, which was credited to his account by witness 'W', in cash, to Salim Fruit (A2). Thus, prima facie, there is no material to show that any part of the alleged proceeds of crime was given to any of the applicants.

34) At this juncture, the fact that there were no allegations of whatsoever nature against the applicants in the FIR and the supplementary statement of the first informant deserves to be considered. The first informant does not claim that any of the applicants had made any attempt to extort money from the first informant. The reliance of the prosecution on the statements of the witnesses to the effect that they were aware that the applicants and the co-accused were in touch with Riyaz Bhati (A1) and Salim Fruit (A2) and indulged in unlawful activities, does not advance the cause of the prosecution. Such statements that the witnesses were "aware" and/or "knew" about the friendship and/or relationship between the applicants and the co-accused are not sufficient to establish the nexus between the applicants and the organized crime syndicate.

.....

38) Reliance on the CDR to show that the applicants and the co-accused were in touch, in itself, without anything more, can not be a circumstance to establish nexus with the organized crime syndicate.

39) The conspectus of the aforesaid consideration is that there is prima facie no material to establish the nexus between the applicants and the alleged organized crime syndicate. Hence, I am impelled to hold that there are reasonable grounds to believe that the applicants may not be guilty of the

offences for which they have been arraigned."

6. Evidently, the material arrayed against the applicants appears to be the very same which was arrayed against the co-accused, who have been released on bail. This Court had adverted to the two prime circumstances pressed into service against the co-accused and the inadequacy of material to prima facie sustain the charge of the co-accused being the members of the organized crime syndicate. In fact, the role of the applicants and co-accused, who have been released on bail, appears to be inseparable, and the role of the applicants finds reference in the aforesaid reasons recorded by this Court.

7. The learned APP upon being called upon by the Court to respond as to whether principle of parity applies, fairly submitted that it would be difficult to urge that parity does not apply.

501&16-BA3191-2023&2270-2024.DOC

8. The aforesaid reasons which weighed with this Court apply with equal force to the claim of the applicants as the applicants appear to be similar circumstanced like the co-

accused, who have been released on bail.

9. So far as the antecedents of the applicants, it is not the prosecution case that the applicants are arraigned as co-

accused in any of the crimes registered against the wanted accused, Riyaz Bhati (A1) or Salim Fruit (A2). In the affidavit-in-reply in ABA/2270/2023, it is contended that Javed Khan @ Papa Pathan (A6) has been arraigned in two crimes i.e. CR No.210/2017 registered at Samta Nagar Police Station and CR No.82/2004 registered at Malad Police Station. However, the applicant Javed Khan has been acquitted in the trials arising out of the above crimes.

Evidently, the said crimes cannot be arrayed against the applicant Javed Khan (A6).

10. Qua applicant Amjad Redkar (A3) one crime is shown to have been registered as CR No.1292/2009 at Malvani Police Station, Mumbai, for the offences punishable under Sections 420, 467, 468 and 506(2) of the Penal Code. It does not appear that applicant Amjad Redkar (A3) has been arraigned with any of the co-accused in the said crime. Having regard 501&16-BA3191-2023&2270-2024.DOC to the timelag of almost 15 years from the date of the registration of the said crime, in my considered view, the aforesaid antecedent cannot be arrayed against the applicant Amjad Redkar to deprive him of his personal liberty.

11. The Court would be thus justified in drawing an inference that the applicants may not indulge in identical offences, if enlarged on bail. I am, therefore, inclined to release the applicants on bail.

12. Hence, the following order:

:ORDER:

- (i) Applications stand allowed.
- (ii) The applicants be released on bail in MCOC Special

Case No.1513 of 2022 arising out of D.C.B., C.I.D., CR No.150 of 2022 (original CR No.540 of 2022 registered with Versova Police Station) for the offences punishable under Sections 386, 120B, 506 (2) read with Section 34 of the Indian Penal Code, 1860 and Sections 3 (1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999, on furnishing a P.R. Bond in the sum of Rs.1,00,000/- each, with one or two sureties in the like amount, to the satisfaction of the Special Court.

501&16-BA3191-2023&2270-2024.DOC

(iii) The applicants shall mark their presence at D.C.B., C.I.D on the first Monday of every alternate month between 10.00 am to 12.00 noon for a period of three years or till conclusion of trial, whichever is earlier

(iv) The applicants shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

(v) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicants and co-

accused and the trial court shall not be influenced by any of the observations made hereinabove.

[N. J. JAMADAR, J.]