

# Mohammad Shabbir Noor Mohd. Momin vs The State Of Maharashtra on 7 August, 2024

**Author: N. J. Jamadar**

**Bench: N. J. Jamadar**

2024:BHC-AS:31722

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 711 OF

Mohammad Shabbir Noor Mohd. Momin

Versus

The State Of Maharashtra

Mr. Nandini Tandel for the Applicant.

Ms. Mahalaxmi Ganapathy, APP for the Respondent - State  
PSI Dhotre, A.E. Cell, DCB, CID, Mumbai.

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PC.:

1. Heard the learned Counsel for the parti

2. The applicant, who is arraigned in MCOC

of 2017 for the offences punishable under Sections 1

506(2) read with Section 34 of the Indian Penal Code Sections 3, 25, 27 and 35 of the Arms Act, 1959 and (a) read with Section 135 of the Maharashtra Police preferred this application to enlarge him on bail.

3. Initially C.R.No.3 of 2017 was registered at Police Station on the basis of a report lodged by the first informant who was the Manager of Gazali Hotel. The substance of the report was that on 21st October 2016 while the first informant

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Hotel, Andheri, Mumbai, a person came to the counter and handed over a card to the informant which contained a written note stating "Ravi Bhai 00447440190035 call kar nahi to agli bar warning nahi, sidha upar" The said person had allegedly threatened the first informant to apprise the owner of Gazali Hotel by uttering the words "Tere andar ke baap ko dena aur call karne bolna, call nahi kiya to upar bhejunga".

4. The first informant alleged, the said person had fired a round from the pistol towards the first informant and, thereafter, fled away along with his associates who were waiting outside the hotel on a motorcycle. The investigation revealed that the persons, who

came thereat and attempted to commit extortion and fired at the first informant with intent to commit murder, are the members of the organized crime syndicate, of which Ravi Pujari (accused No.8) is the gang leader. Thus, the provisions contained in the Maharashtra Control of Organized Crime Act, 1999 (MCOCA, 1999) came to be invoked.

5. Mr. Ramesh Kitta Poojari (A2) Mrityunjay Narayan Das @ Montu @ Bangali (A3) were arrested on 5 th February 2017. Suresh Kumar Pandian Pillai (A4) came to be arrested on 8 th February 2017. The applicant came to be arrested on 8th February 2017.

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6. M. Das @ Montu (A3) was allegedly the person, who had entered into Gazali Hotel, thrown the chit containing the above note and fired at the first informant. M. Das @ Montu had allegedly gone to Gazali Hotel alongwith the applicant (A5) and fled away after the firing as the pillion rider on the motorcycle driven by Applicant (A5).

7. At the outset, the learned Counsel for the applicant submitted that the co-accused M. Das @ Montu (A3), Suresh Kumar Pandiyan Pillai (A4) and Ramesh Kitta Poojari (A2) have

been released on bail by this Court by an order dated 22 nd January 2024 on the ground of long incarceration. Prior thereto, Suresh Muttiah Poojari @ Suresh Anna (A1) was released on bail by this Court by an order dated 28th February 2023. This Court has also released Dhanpal Krushna Shettiya (A6) on bail by an order dated 31st July 2024. Therefore, the applicant is also entitled to the same dispensation.

8. Ms. Ganapathy, the learned APP, fairly submitted that the ground of long period of incarceration, which weighed with this Court in releasing abovenamed co-accused on bail, may govern the claim of the applicant for bail as well. The learned APP, however, submitted that there are two antecedents of the applicant. He has

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been arraigned in C.R. No. 06 of 2017 registered with Borsad Police Station, Anand, Gujarat for the offences punishable under Section 307, 120B of the Indian Penal Code, 1860 and Section 25 of the Arms Act and C.R. No. 58 of 2014 registered with Kadi Police Station, Mehsana, Gujarat for the offences punishable under Sections 307, 395, 397 of IPC and Section 25 of the Arms Act. Thus, the accused does not deserve to be enlarged on bail as there is a strong possibility of the applicant again indulging in identical

offences, if released on bail.

9. Suffice to note that, while releasing the co-accused M. Das @ Montu and others on bail, this Court had noted that those applicants also had antecedents and that put the Court on guard, yet, having regard to the long period of incarceration, this Court considered it appropriate to release those accused on bail by imposing stringent conditions. The observations in paragraph No.15 to 25 of the said order deserve extraction. They read as under:-

"15. Undoubtedly, the statutory restrictions on the grant of bail in special enactments like MCOCA, 1999, NDPS Act, 1985 and Unlawful Activities Prevention Act, 1967, are to achieve the object of the respective enactments. Having regard to the nature of the offences, the legislature has considered it expedient to put additional restrictions in the matter of grant of bail. There can be no qualm over the fact that the offences being of grave nature, release of the

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accused therein, is conditioned by the twin satisfaction. However, there is, at the same time, a competing claim of the unjustified denial of personal liberty. These provisions are thus, premised on the justification that the trial in which those provisions apply is also concluded expeditiously.

16. In the case of Shaheen Welfare Association V/s. Union of India and Ors.1 the Supreme Court enunciated that the stringent provisions can be justified on the presumption that the trial of the accused will take place without undue delay. The observations in paragraph No.10 reads as under:

"10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh case<sup>2</sup>, on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21."

17. In Union of India V/s. K.A.Najeeb (supra), where the accused was facing trial for the offences punishable under the Unlawful Activities Prevention Act and the rigours of Section 43-D(5) of the said Act, were attracted, the Supreme Court observed as under :-

"12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS") which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi) <sup>3</sup>, Babba v/s. State of Maharashtra<sup>4</sup> and Umarmia v/s. State of Gujarat <sup>5</sup> enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v/s. Union of India<sup>9</sup>, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse

- 1 (1996) 2 SCC 616
- 2 (1994) 3 SCC 569
- 3 (1999) 9 SCC 252
- 4 (2005) 11 SCC 569
- 5 (2017) 2 SCC 731

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consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.

17. 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. The Supreme Court has thus enunciated in clear and explicit terms that the rigours of the provisions which restrict the grant of bail will meltdown where there is no likelihood of the trial being completed within a reasonable time and the period of incarceration already undergone has exceeded substantial part of the prescribed Sentence.

19. Reverting to the facts of the case, it is imperative to note that the punishment for the major offence punishable under Section 307 of IPC, in the absence of any hurt having been caused to any person, may extend to imprisonment for 10 years. The applicants are in custody for almost 7 years. The offences punishable under Sections 3(1)(ii), 3(2) and 3(4) of the MCOCA, 1999, entail punishment of imprisonment which shall not be less than five years but which may extend to imprisonment for life. The period of incarceration of each of the applicants exceeds the minimum sentence prescribed under each of the aforesaid sections.

20. I find substance in the submission on behalf of the Applicants that since not a single witness has yet been examined, it is unlikely that the trial can be concluded within a reasonable period.

21. Learned APP made an endeavour to urge that non co-operation by the accused has also been contributing to the delay in the conclusion of the trial.

22. Prima facie, copies of the Roznama of the proceedings do not

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indicate that the applicants are solely responsible for the protraction of the trial. In any event, the period of incarceration of the applicants is such that their claim cannot be contested on the ground that they have also contributed for the delay in the disposal of the cases.

23. On the aspect of parity, it is necessary to note the Applicants - Ramesh Pujari and Sureshkumar Pandiyan Pillai have been roped in as the co-conspirators. Suresh Muttiah @ Suresh Anna - Accused No.1, who has been released on bail by a order dated 28 February 2023, was also attributed the role of co-conspirator. The court recorded that in that view of the matter, the criminal antecedents of the said applicant should not be an impediment in granting bail to him.

24. Indeed, there are antecedents of the applicants. Accused No.2 Ramesh Pujari is stated to be involved in 7 cases. He has been convicted in one case and acquitted in three cases. Three cases are pending trial. Applicant/accused No.4 - Sureshkumar Pandiyan Pillai is also involved in 8 cases and he has been convicted in three cases and four cases are pending trial and in one case he has been acquitted. The applicant/accused No.3 - Mrityunjay Narayan Das @ Montu @ Bangali, is stated to be involved in three cases and has been acquitted in one and two cases are pending trial.

25. The antecedents of the applicants put the Court on guard. It would, therefore, be expedient to impose stringent conditions while directing the release of the applicants on bail."

10. The applicant has been in custody for more than seven and a half years. It is extremely unlikely that trial can be concluded within a reasonable period. In the face of such long incarceration, the statutory restrictions in the matter of grant of bail melt down. At any rate, the applicant is entitled to claim parity with those



accused. The apprehension on the part of the prosecution of the applicant indulging in identical offences, can be taken care of by imposing conditions. Hence, the following order:-

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#### ORDER

- (i) The Application stands allowed.
- (ii) The Applicant -Mohammad Shabbir Noor Mohd. Momin be

released on bail in MCOCA Special Case No.4 of 2017 in connection with C.R.No.3 of 2017 registered with D.C.B. C.I.D. Anti-Extortion Cell, Mumbai, (C.R.No.349 of 2016 registered with Vile Parle Police Station), on furnishing P.R. bond of Rs.1,00,000/- with one or more sureties in the like amount.

(iii) On being released on bail, the Applicant shall not enter Mumbai, Mumbai Suburban District and Thane District, except for the purpose of attending trial and reporting to the Investigating Officer.

(iv) The applicant shall report to the D.C.B. C.I.D. Anti Extortion Cell, Mumbai, every month i.e. on first Monday between 11.00 a.m. to 1.00 p.m.

(v) The applicant shall furnish his contact details and residential addresses to the D.C.B. C.I.D. Anti-Extortion Cell, Mumbai, while residing outside Mumbai, Mumbai Suburban and Thane Districts and shall keep them updated in case there is any change.

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(vi) The applicant shall report to the jurisdictional Police Station

where the Applicant would reside, on every alternate Sunday between 11.00 a.m. to 1.00 p.m.

(vii) The applicant 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 the facts to court or any police officer. The applicant shall not tamper with evidence.

(viii) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(ix) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

(x) Application disposed.

(N. J. JAMADAR, J.)

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