

(2025) 01 SC CK 0052

Supreme Court Of India

Case No: Criminal Appeal No. 22 Of 2025 (@ Special Leave Petition (Criminal) No. 15341 Of 2023)

Jayshree Kanabar

APPELLANT

Vs

State Of Maharashtra & Ors

RESPONDENT

Date of Decision: Jan. 2, 2025

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 439
- Indian Penal Code, 1860 - Section 120B, 201, 212, 302, 320
- Maharashtra Control of Organized Crime Act, 1999 - Section 3(1)(ii), 3(2), 3(4), 21(4)
- Arms Act, 1959 - Section 3, 25
- Maharashtra Police Act, 1951 - Section 135
- Prevention Of Money Laundering Act, 2002 - Section 45(1)

Hon'ble Judges: C.T. Ravikumar, J; Sanjay Karol, J

Bench: Division Bench

Advocate: Nitin Saluja

Final Decision: Allowed

Judgement

C.T. Ravikumar, J

1. Leave granted.

2. The widow of the victim in MCOCA No.274/2021 arising out of Crime No.413/2020 registered at Bundgarden Police Station, Pune against

respondent Nos.2 and 3 herein, who are respectively accused Nos.2 and 3 therein, filed this Special Leave Petition against the order dated 06.11.2023

in Criminal Bail Application No.2164/2022 of the High Court of Judicature at Bombay. The said crime was registered for offences punishable under

Sections 320, 120B, 201 and 212 of the Indian Penal Code, 1860 (for short, "the IPC"), Section 3/25 of the Arms Act, 1959; Section 37(1)(3)

read with Section 135 of the Maharashtra Police Act, 1951 and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act,

1999 (for short, "the MCOCA"). As per the impugned order, accused Nos.2 and 3 were granted bail in the said case. Manifold contentions

have been raised to challenge the grant. Before delving into them, compendiously, we will refer to the prosecution's case which led to the case on

hand.

3. There was a long-drawn civil dispute between the deceased Rajesh Haridas Kanabar on one side and families of respondent Nos.2 and 3 on the

other over certain extent of land comprised in Gat No.348 situated at Bavdhan in Pune. Respondent Nos.2 and 3, who are accused Nos.1 and 2,

appointed accused No.3 as their agent to take care of their legal matter and other issues relating to the aforesaid property. Though, a settlement was

seemingly arrived at, the accused were under the impression that the deceased was not favourably responding to the settlement. On 05.10.2020, the

revenue proceeding, which is an off-shoot of the civil dispute, was listed before the Collector of Pune. The accused, as also the deceased attended the

proceedings. On coming out of the office of the Collector, when the deceased was purchasing fruits near the gate of State Bank of India at about 2:45

pm, accused No.4 viz., one Hasmukh Patel shot him with a country made pistol. The informant Sri Vishwas Dayanand Gangavane carried him to a

nearby hospital where he was declared dead. Initially, charge sheet was filed against the accused sans accusation of commission of offences under

MCOCA. However, a supplementary charge sheet was filed on 03.04.2021 whereunder offences under MCOCA were also inserted against them

alleging that accused Nos.1 to 4 are members of the Organised Crime Syndicate of which accused No.4 is the gang leader and based on the

conspiracy hatched between them, they killed Rajesh Kanabar to have unlawful gains.

4. It is the core contention of the appellant that a bare perusal of the impugned order itself would bring home the fact that the order granting bail to

respondent Nos.2 and 3 (accused Nos.1 and 2 in the MCOCA case) is an outcome of consideration akin to a mini-trial. Instances of observations, partaking the character of findings on the merits of the case, have been pointed out by the learned Senior Counsel appearing for the appellant. It is further contention made on behalf of the appellant that though there was an irrecusable duty on the Court to consider whether the twin conditions to be satisfied in terms of Section 21 (4) of MCOCA the Court transgressed into impermissible area, ignoring the fact that it was only considering an application for bail and made appreciation of the materials on record and arrived at findings that respondent Nos.2 and 3 had not played any role in the incident of shooting, that there is no evidence, even to suggest that respondent Nos.2 and 3/accused Nos.1 and 2 were directly or indirectly in contact with accused No.4, the gang leader and that a perusal of the evidence would indicate that accused No.3 was directly in contact with accused No.4, the gang leader and other members of the Crime Syndicate. It is submitted by the learned Senior Counsel appearing for the appellant that it is such highly improper and impermissible manner of consideration that culminated in the impugned order of granting bail to respondent Nos.2 and 3 and it would certainly deprive a fair trial to the prosecution. Raising such contentions, the impugned order granting bail to respondent Nos.2 and 3 is sought to be quashed and set aside and that they be made to surrender soon.

5. Per contra, the learned counsel appearing for Respondent Nos.2 and 3 would contend that the impugned order invites no interference. The contention of the learned counsel is to the effect that initially, the accused were not accused of commission of offence(s) under MCOCA and they were inserted later, through supplementary report, solely with the intention to ensure non-grant of bail to the accused. It is also submitted that the respondent Nos.2 and 3 were arrested in connection with the subject crime on 06.10.2020 and they were enlarged on bail as per the order impugned only on 06.11.2023. A perusal of the conditions of bail would reveal that they were adequate and appropriate to ensure that the accused would not flee from justice and would face the trial, it was further submitted.

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.* (2021) 6 SCC 230; 2021 INSC 265 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.

8. A mere glance at the impugned order would go to show that there is substance in the contentions of the appellant. No serious effort is required to

pick out such observations in the form of findings made in the impugned order by the High Court in regard to the role of the accused persons involved

in the crime in question, including that of respondent Nos.2 and 3. In paragraph 11 of the impugned order it was observed and held thus:-

“It is seen on perusal of the record that accused No.1 and 2 did not directly or indirectly deal with the deceased at any point of time. Accused Nos.1 and 2

had given this responsibility to accused No.3”

9. In paragraph 12 of the impugned order with regard to respondent Nos.2 and 3 (accused Nos.1 and 2) and also accused No.3 the High Court

observed and held as under:-

“There is no evidence even to suggest that accused Nos.1 and 2 were directly or indirectly in contact with the gang leader accused No.4”. It is

undisputed that accused Nos.1, 2 and 3 had attended the Office of the Collector for the purpose of the case. Similarly, the deceased has also attended the Office of

the Collector for attending the said case. It is not the case of prosecution that before the actual incident of shooting of the deceased by accused No.4, there was any

quarrel or any dispute between accused Nos.1, 2 and 3 on one hand and deceased on the other hand. The presence of accused Nos.1, 2 and 3 in the Office of the

Collector was for the purpose of the case. It is seen that in the incident of shooting, no role was played by accused Nos.1, 2 and 3. It is seen that the witnesses,

whose statements have been recorded by the Investigating Officer, have not attributed any specific role or overt act to the accused Nos.1 and 2 at any time.

10. In paragraph 14 of the impugned order, it was observed and held:-

“Perusal of the evidence indicates that accused No.3 was directly in contact with the gang leader and other members of the Crime Syndicate. Accused Nos.1 and 2 were not at all in their contact. Accused No.3 was appointed as an agent by accused Nos.1 and 2 to take care of their litigation and to look after their interest. It is seen that the role played by accused No.3 was direct role”

11. In paragraph 22 of the impugned order, it was observed and held thus:-

“It is undisputed that accused Nos.1, 2 and 3 had no connection with the gang leader or Crime Syndicate”

12. In the light of the afore extracted observations partaking the character of findings, the appellant is purportedly justified in contending that the

manner of consideration and the conclusions arrived at in pursuance thereof would cause prejudice to the prosecution during the trial and if they are

allowed to remain, it would deprive them of a fair trial. The fact is that besides such specific observations in the nature of findings in regard to the

roles played (or not played) by accused Nos.1, 2 and 3 and the consequential conclusion that respondent Nos.2 and 3 are entitled to bail, as accused

No.3 who played direct role was granted bail there was no consideration in the manner required under law considering the fact that the case on hand

carries allegation of commission of offences under MCOCA against respondent Nos.2 and 3. We may hasten to add that we shall not be understood

to have held that respondent Nos.2 and 3 had played definite roles in the commission of the offence involved in the case on hand which resulted in

the death of Rajesh Haridas Kanabar. Certainly, the question whether his death is homicide and if so, who is or are the culprit(s) are matters to be

decided by the trial Court on conclusion of the trial. In short, appreciation of materials on record for the purpose of forming a definite opinion with

respect to the question as to whether an accused person(s) had played roles or not, in the crime concerned is not permissible while considering an

application for grant of bail. At any rate, the afore extracted observations ought not to have been made by the High Court regarding the roles played

or not played by the accused Nos.1, 2 and 3 in the above mentioned MCOCA case. Add to the aforesaid situation, the impugned order is also infected with absence of consideration which ought to have been bestowed by the Court in the matter of grant of bail taking note of the involvement of allegation of offence(s) under the MCOCA Act against the respondent Nos. 2 and 3. It is also a matter of concern that in spite of the fact that the accused No.3 was not a party before the High Court, the High Court made specific finding to the effect that he played a direct role.

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.

14. In the circumstances we are of the considered view that the matter has to be remanded for fresh consideration by the High Court of the application moved by respondent Nos.2 and 3 for bail in MCOCA case No.274 of 2021 arising out of Crime No.413/2020 registered at Bundgarden Police Station, Pune. In that regard the impugned order dated 06.11.2023 is set aside and Criminal Bail Application No.2164 of 2022 is restored into the file of the High Court in its original number to be considered afresh in accordance with law. The parties including the appellant herein who was the petitioner in Intervention Application No.4644 of 2022 would be at liberty to raise all contentions legally permissible to raise before the High Court during consideration of the application. In this regard, the parties shall appear before the High Court on 29.01.2025 and the High Court may fix a date for hearing of that application. Taking note of the fact that the respondent Nos.2 and 3 were on bail from 06.11.2023, they shall be permitted to be on bail, despite the setting aside of the order, with the same conditions as have been imposed under the impugned order till the disposal of the

abovementioned Criminal Bail Application No.2164 of 2022. The appeals are allowed as above.

15. In view of the fact that the crime is of the year 2020, the High Court is requested to dispose of the application expeditiously, preferably within one month from the receipt of the copy of this order. Let a copy of this order be sent to the Registrar General of the High Court of Judicature at Bombay.