

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.554 OF 2024

Nikhil Chandrakant Rokade & Ors. .. Applicants

Versus

The State of Maharashtra .. Respondent

...

Mr.Prashant Pandey with Mr.Dinesh Jadhvani and Mr.Irfan Unwala i/b W3 Legal LLP for the Applicants.

Smt.M.H.Mhatre, A.P.P. for the State/Respondent.

...

CORAM: BHARATI DANGRE, J.

DATED : 18th APRIL, 2024

P.C:-

1. The three Applicants seek their release on bail in connection with C.R.No.61 of 2020 registered with Kurar Police Station, which has invoked the offences punishable under Sections 307, 387, 504, 506(2) and 120-B read with Section 34 of the Indian Penal Code (for short, “**the IPC**”), Sections 3, 25 and 27 of the Arms Act alongwith Sections 3(1) (ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short, “**the MCOCA**”)

On completion of investigation, the charge-sheet is filed and the Applicants claim parity with co-accused Nos.2, 3 and 5 and it is their specific case that the role attributed to the

present Applicants is similar to those, who are released on bail.

2. Heard Advocate Prashant Pandey for the Applicants and Smt.Mhatre, the learned A.P.P. for the State.

The orders releasing the co-accused on bail are also filed alongwith the Application and I have perused the same.

3. As far as the present Applicants are concerned, the Special Judge under the MCOCA, by order dated 25/07/2023, rejected their applications on the ground of their *prima facie* involvement and complicity in the organised crime and on the observation that they were co-accused in previously registered offences, which is reflected in the copy of the charge-sheet in Sessions Case No.717 of 2011 and also on the basis that the sanction order reflect the commonality between the previously registered offences and the present crime.

4. The three Applicants before me are charge-sheeted as Accused Nos.1, 9 and 10 and the learned A.P.P. Mrs.Mhatre would strongly oppose the release of the Applicants on bail, since they face accusations in a serious offence as MCOCA. She would place reliance upon the confessional statement of one Santosh Shivnarayan Sharma @ Bhaiyya, who has referred to the Applicants as the participants in the organised crime syndicate.

5. The subject F.I.R. was registered on 01/02/2020 on the say of the Complainant, who reported that as a worker in the shop, he opened the shop at 9.30 a.m. and after returning on having lunch, when he was present alongwith his colleagues in the shop and when he opened the window of the shop on the front side of the counter, one unknown person came wearing a blue colour full sleeved shirt and blue colour jeans with his face covered. He immediately fired one shot from his handgun in his direction, resulting into the glass of the wooden cupboard by his side, being shattered and some pieces of the glass also hit him. He ran inside to save his life and the people in the surrounding area, on hearing the gun shot assembled and the shop was closed, as everyone was scared. When the shop was opened, he saw one white colour envelope lying inside the shop, on which in Hindi language, it was scribbled as, "Ke office par letter pochana" and on other side, it was scribed with, "Uday Pathak, Rahul Mandri, Vikki Pise, Pathak Gang".

When he opened the envelope, he would read the words scribed in Hindi on the first page, "Pathak Gang Panch Karor Chahi hain nahi to marega." On the second page, it was scribed as, "Jab bhai maarata hain to darad kitana hota hain wo samaj me aa jayega tuje Udhay Pathak, Vikki Pise, Rahul Mandri.". On the third page, it was written that, "Jo logo ne mere bhai to marwane me the aur jo marane me the sab marenge abhi to chaalu hua hai aur khatam mai karunga Uday Pathak gang. On the fourth page, it was written that, "Aur mujhe agar paisa nahi mila to dono me se ek jarur marega jaldi". The fifth page contains the word, "Pathak gang Panch karor chaahiye nahi to marega". On sixth and seventh page, it was written that, "Aur

tujhe kya laga tujhe Uday Pathak bhul gaya”, “panch karor tere aur tere bhai ki jaan ki kimat mujhe chahiye”. On eighth page it was scribed that, “Jin logo ne mere bhai ko mara tu unko chhudane ke liye poaisa kharcha kiya”.

6. The Complainant specifically stated that the person, who fired, was present at the distance of 200 meters from the shop and he would be able to identify him, if seen again.

This resulted in registration of the subject C.R., invoking the offences under the IPC to which the offences punishable under the MCOCA were also added. Amongst those who were charge-sheeted, Mangesh Pandey, Accused No.2 and Jiten Garsiya @ Jitlya, Accused No.3 were released on bail, whereas co-accused no.5-Pravin Baviskar was granted default bail.

The three Applicants are alleged to be the members of a crime syndicate, headed by gang leader Uday Pathak, who was aided and assisted by Babu Chintale, another gang leader and it is alleged that Uday Pathak, who was incarcerated, with the aid of his associates; Babu Chintale, Santosh Sharma, Nikhil Rokade, Suraj Sagare, Vikas @ Mangesh Pande, Jitu @ Jitlya Garsiya and Pravin @ Pary Prakash Baviskar, had engaged into an unlawful activity of receiving *hafta*, by creating reign of terror and with the help of Santosh Sharma, arms and ammunition were procured. It is also the case of the prosecution that accused Uday Pathak alongwith Babu Chintale had hatched the conspiracy, by organising various meetings, and by involving the other co-accused and after conducting recce, the arms were procured and Babu Chintale

had even fired the arm in the unauthorised parking area which was under his control.

The prosecution collected material to establish that the arrested accused, Babu Dhundappa (Arjun) Chintale has more than three offences in his credit, being registered in last ten years.

7. In the backdrop of the aforesaid material, prior approval was granted by the Additional Commissioner of Police under Section 23(1)(a) of the MCOCA, in the backdrop that Babu Chintale, a close and active associate of Uday Pathak was arrested in 2011, under the charge of brutal murder and after he was released from jail in 2014, he started his unlawful activity on behalf of Uday Pathak and committed an offence of robbery alongwith other associates, which resulted in an offence being registered in Kurar Police Station. He was arrested and the charge-sheet was submitted of which, the cognizance is taken by the Court.

Babu Chintale committed another offence of robbery in the year 2019, where the charge-sheet is filed. It is alleged that all the offences registered against the leader and the crime syndicate members are cognizable offences, with the punishment prescribed of three years and more.

The incident which resulted in invocation of MCOCA is alleged to have been committed by the members of the organised crime syndicate on 01/02/2020, by Santosh Sharma, on instructions of gang leader Uday Pathak and with active assistance of Babu Chintale and other accused persons,

by firing a firearm for the purpose of extortion. It was repeated at two distinct places and Santosh Sharma threw the written chits in the envelope, which contained the name of Uday Pathak Gang and also indicated the extortion amount.

Santosh Sharma, the arrested accused, confessed that he had fired on the instructions of Uday Pathak and threw the chits handed over to him by Uday Pathak.

It was alleged by the ACP, that Uday Pathak, despite being incarcerated, was running the organised crime syndicate, with the aid of Babu Chintale and the other co-accused, which include the present Applicants.

8. On 07/07/2020, sanction was granted by the Commissioner of Police, Brihanmumbai under Section 23(2) of the MCOCA against all the accused persons, including the Applicants.

9. The learned counsel Mr.Pandey has called in question the invocation of provisions of the MCOCA and he would submit that the provisions of the said enactment cannot be applied to the offence, which was registered with Kurar Police Station. He would submit that the term, 'organised crime syndicate' is assigned a specific meaning in the statute and, since, the incident resulting into registration of the subject C.R. did not fall within the definition of 'organised crime', the invocation of provisions of the Act, is unsustainable. Apart from this, it is the submission of Mr.Pandey that it is for more than three years that the Applicants have been incarcerated and there is

no chance of the trial being completed at the earliest, the further incarceration of the Applicants, awaiting the trial is unwarranted.

Mr.Pandey would also place reliance upon the order passed by me in the case of Mangesh Pandey and Jiten Garsiya.

10. It is the case of the prosecution that the gang leader Uday Pathak alongwith Babu Chintale was operating as a syndicate and they were behind the two incidents, one of which resulted in lodging of the complaint by Mr.Mukesh Sharma, when he received an envelope demanding the amount allegedly from Uday Pathak Gang, threatening that if the amount of Rs.Five crore, as demanded, is not paid, he would be killed.

The CCTV footage from both the spots was taken into custody and it is revealed that it is Santosh, co-accused, who opened the fire in both the incidents. As per the prosecution, he belongs to Uday Pathak Gang and upon his arrest, it was disclosed that the present Applicants were also involved in committing the offence. Admittedly, the revolver and empty cartridges and live cartridges were recovered from Santosh, who fired at the spot. When, I repeatedly inquired with the learned A.P.P. as to what is the material in the charge-sheet, which reveal their involvement, she referred to the confessional statement of co-accused Santosh Sharma @ Bhaiya, who was arrested and the said statement is placed on record alongwith the affidavit filed by the State.

In the said statement, it is disclosed that he was working as a security guard in Mumbai for last six months and used to go to village for cultivation purpose. In the village, he was invited by one acquaintance, who informed that Shardaprasad Pathak was the resident of their village and his son Uday Pathak is in jail for the charge of murder. He was, therefore, associated with the family of Uday Pathak and one month prior, he went to see Uday Pathak outside Court and he was introduced to Nikhil Rokade.

On being informed that he was to visit village in the next month, he was asked to get a revolver alongwith live cartridges and he was told that Nikhil would get him Rs.30,000/-. Thereafter, when he went to the village, he purchased the revolver and six cartridges for Rs.23,000/- and he even fired one round to ascertain, whether it is working. In December 2019, when he came back to Mumbai, he concealed the same in the house of Uday Pathak.

In January 2020, when he met Uday Pathak in the Court, he informed about the task being accomplished and at that time, according to him, Suraj and Nikhil came to see him and Uday asked him to give the revolver to Suraj. It is Uday Pathak, who informed him that Suraj had fired and, therefore, he asked him to take weapon in his possession and Suraj disclosed that he had fired in the air and, therefore, he (Santosh) retained the weapon and one day, when he took the weapon for showing it to Babu Chintale, who was running the unauthorised parking, he also fired one round in the air.

Uday, upon being disclosed about the firing, was petrified and scolded him. He was asked to meet him in Arthur Road

jail, and when he attended, two envelopes were handed over to him and he was asked to fire two rounds in 'Anand Medical' and 'Rokdiya Traders' within a gap of two hours. He acted accordingly, fired rounds and also dropped the envelopes on the spots.

11. Perusal of the aforesaid statement would reveal a reference to Nikhil, but there is reference of Applicant No.2-Vivekanand @ Vicky and Applicant No.3-Rahul Mandri.

When I specifically asked the learned A.P.P. to point out any material against Applicant Nos.2 and 3, she conceded that there is no other material.

12. In order to establish that the Applicants are the associates of the gang leader, what is relied upon is the confessional statement of Nikhil, but this statement has been retracted and apart from the said confessional statement, there is no material in the entire charge-sheet to establish the link between the Applicant and the gang leader.

Alongwith the affidavit, a list of offences registered against gang leader Uday Pathak and the active gang leader Babu Chintale is annexed. As far as Applicant No.1-Nikhil is concerned, he is shown to be involved in two offences registered with Tulinj Police Station, but pertinent to note that there is no commonality, as regards the said CRs with either of the gang leaders, except the present C.R.No.61 of 2020 registered with Kurar Police Station.

However, in the case of Applicant No.2-Vivekanand, there is a commonality in form of C.R.No.129 of 2011 in which Uday Pathak as well as Babu Chintale are also the co-accused alongwith Applicant No.3-Rahul Mandri.

13. It is the case of the prosecution that Uday Pathak is the original gang leader of Pathak Gang and, since, 2011 he is in jail in connection with this C.R. and, thereafter, he had left the leadership of the gang to Babu Chintale, who is operating as per his instructions in Kurar area. Undisputedly, there are sixteen offences registered against Uday Pathak and nine offences against Babu Chintale, but unless and until it is established that the Applicants are the members of the organised crime syndicate, which term is assigned a definite connotation under the MCOCA, *prima facie*, they cannot be held guilty of committing the offence under the MCOCA. There is no evidence in form of any active participation of the present Applicants and as far as Applicant No.1 is concerned, a confessional statement is relied upon, where his association with Santosh Sharma has surfaced, as he was preset when Santosh Sharma was handed over the two envelopes, white and brown respectively, by telling him, “*do jagah dana fodna hai aur udhar chitthi dalna hai*”. But, in any case, the rounds were fired by Santosh Sharma and not by Applicant No.1. Another incriminating circumstance, which is sought to be pressed into service is the part of the confessional statement of Nikhil, when he states that Uday, the gang leader was conversing with his relatives from his mobile, when Santosh call was incoming but was kept on waiting and when after the

conversation is over, he informed Uday about the said phone call, he was asked to call him and Santosh told Uday that the work is accomplished and Udaybhai responded, by saying, '*Jai Mata Di*'.

14. It is the submission of Mr.Pandey that the confessional statement is retracted by Nikhil. Assuming that the said statement is not retracted and is acted upon, it will be a matter of trial to determine, whether merely by receiving phone call of the co-accused and for assisting a contact to be established with the gang leader, will Nikhil could be said to be a member of organised crime syndicate. As far as the other two co-applicants are concerned, admittedly there is no material in the charge-sheet and even the confessional statement of co-accused, does not contain any reference to them.

In the wake of the above, since the Applicants are incarcerated since the year 2020, I deem it appropriate to secure their release on bail, subject to the following conditions :-

: ORDER :

- (a) Application is allowed.
- (b) Applicant No.1-Nikhil Chandrakant Rokade, Applicant No.2-Vivekanand Sudhir Pise @ Vicky and Applicant No.3-Rahul Pandurang Mandri @ Rahul Mantri shall be released on bail in connection with C.R.No.61 of 2020 registered with Kurar Police Station, on furnishing P.R. Bond to the extent of Rs.25,000/- each, with one or two sureties in the like amount.

(c) The Applicants shall mark their attendance before the concerned police station on first Monday of every trimester between 3.00 p.m. to 5.00 p.m.

(d) The Applicants shall attend the trial on regular basis.

(e) The Applicants 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.

(f) On being released on bail, the Applicants shall furnish their contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(SMT. BHARATI DANGRE, J.)