

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1171 OF 2014

Chandrakant Dattaram Dhage

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. S. R. Chitnis Senior Counsel i/b Mr. Nitin Sejpal for Applicant

Ms. A. S. Pai APP for the State.

Mr. Shashikant S. Yadav. Asstt Police Inspector

Dongri Police Station

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : JULY 30, 2015

PC :

Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is charge-sheeted in crime no. 229 of 2012 for offence punishable under section 307, 387, 120 (B), 506 (II) r/w section 34 of Indian Penal Code and section 3 (1) (ii), 3 (2) and 3 (4) of Maharashtra Control of Organised Crime Act, 1999. (Hereinafter referred as MCOCA). Applicant is arrested on 29/01/2013 and is in custody since then.

2) It is the case of prosecution that on 04/10/2012, at about 5.15 p.m., Mangesh Vichare was standing in front of Baudhik Sampada Bhavan with his

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motorcycle. At that time, Rohit @ Pappu Chavan accompanied by Prakash @ Vicky Krishna Bhatkal, absconding accused Anil More rushed towards him with a sharp edged weapon and assaulted him. At that time, Rajesh Vichare intervened to rescue Mangesh and he was also assaulted by the said persons. Rajesh Vichare reported to the police station about the said incident to Antop Hill Police Station. On the basis of the said report, crime no. 229 of 2012 was registered against above mentioned accused. Investigation was set in motion. Accused were arrested on 05/10/2012. Weapons were recovered. It is also the case of prosecution that one of the accused Vijay Kedare was in Nashik Jail. That Vijay Kedare is a leader of crime syndicate and has been booked for several offences. Hence, there was a proposal to prosecute him and the members of syndicate under the provisions of MCOCA.

3) The supplementary statement of Rajesh Vichare was recorded on 07/10/2012. In the supplementary statement, complainant has alleged that Vijay Kedare was in jail in another offence. In June 2008, two unknown persons had come to the office of the complainant and had taken Yogesh & Mangesh to Thane Court as Vijay Kedare was brought to the Court. According to the complainant, when he and his brother Mangesh met Vijay

Kedare. Present applicant who resides in the same locality was also standing nearby. It is alleged that at that time, Vijay Kedare had threatened Yogesh by saying that he should resign from the post of Chief Promoter of Sainagar Sahakari Grihnirman Sanstha and that he should give all the relevant documents to Chandu Dhage i.e. present applicant and that he would be made Chief Promoter of the said scheme and thereafter Vijay Kedare would decide as to who would be appointed as the builder. It is alleged that after some days, present applicant and others had been to the office of the complainant. They had threatened the complainant in the name of Vijay Kedare and had demanded certain documents. It is further alleged that in April 2009, Vijay Kedare was enlarged on Parole and at that time also he had demanded documents from the complainant and threatened him of dire consequences. The sum and substance of the supplementary statement is that present applicant and others were also instrumental in the incident dated 04/10/2012, although, they were not present at the scene of offence.

4) It is pertinent to note that on 21/06/2013, the statement of present applicant was recorded as a witness. He had disclosed to the police that 4 years prior to the incident, residents of his area had formed a society in the

name and style “Sai Guru Mauli Co-operative Housing Society”. That his elder brother Baliram was the Chief Promoter of the said society. They had given the contract to Shri. Kana Singh and Shri. Rajan Bhosale who were running a firm in the name of Omkar Builders. Office of Omkar Builders was in Chawl No. 36. Being a member of the society, eh used to visit the office quite often. The meetings of the society were held in the office of Omkar Builders. 5 to 6 other societies also given work to Omkar Builders. That Vijay Kedare was the resident of the same area and therefore, he was known to the applicant. That on 29/09/2012 Vijay Kedare was admitted in Civil Hospital at Nashik. That he had no knowledge about the incident dated 04/10/2012. That he never met Vijay Kedare in the Court of Mazgaon or in Kurla.

5) Learned senior counsel for the applicant submits that there is no material on record against present applicant to remotely indicate that present applicant was instrumental in any manner in the incident dated 04/10/2012. It is further admitted that it is true that present applicant has been convicted in Sessions Case No. 449 of 2009 for offence punishable under section 307 of Indian Penal Code and that his revision is pending before this Court. Learned senior counsel has drawn the attention of this Court to the sanction order

dated 24/09/2013 whereby sanction was accorded for prosecuting accused under the provisions of MCOCA. It is pertinent to note that no specific charge is attributed to the present applicant. In the conclusion, Commissioner of Police has simplicitor stated that present applicant along with others deserve to be prosecuted under the provisions of MCOCA. It is further pertinent to note that specific act has been attributed to the other accused namely Rohit Chavan, Prakash Bhatkal & absconding accused Anil More. It is further observed that it has transpired in the investigation that the assault upon Mangesh Vichare was pursuant to criminal conspiracy hatched by gang leader Vijay Kedare with arrested accused and wanted accused for obtaining supremacy and gaining pecuniary advantage. Coloumn no. 10 of the sanction order also does not specify any role to the present applicant. That he has not been charge-sheeted along with Vijay Kedare for any other offence. Learned senior counsel further submits that co-accused namely Arogya Swami Paul has been enlarged on bail by Special Court vide order dated 01/08/2014.

6) Learned APP at this stage submits that Arogya Swami Paul was enlarged on bail since there was no evidence to show that he had ever visited the office of complainant, whereas there is evidence to show that present

applicant had visited the office of complainant and therefore, according to learned APP, there is evidence that he belongs to syndicate of Vijay Kedare.

7) Upon perusal of records, it appears that by an order dated 22/03/2013, Commissioner of Police had accorded sanction to prosecute Vijay Kedare and arrested accused under the provisions of MCOCA and present applicant was not even shown as accused. According to learned senior counsel, supplementary statement was recorded on 07/10/2012 and the statement of the applicant was recorded as a witness on 21/06/2013 and at that time, he was not an accused. Learned APP submits that in the supplementary statement dated 07/10/2012, complainant has shown the involvement of the accused in respect of the incidents dated 25/09/2010 and 02/10/2010 wherein it is alleged that present applicant, Arogya Swami Paul, Krishna and others were threatened the complainant and his brother in the name of Vijay Kedare and that complainant had prayed that they also be prosecuted along with Vijay Kedare. On 04/10/2012 and 07/10/2012, Investigating Officer has recorded the statements of some witnesses who have vaguely stated that present applicant is an associate of Vijay Kedare. However, statement of applicant was recorded as a witness and there was no material to arrest him forthwith.

8) According to learned senior counsel for the applicant, present applicant has been falsely implicated. Learned senior counsel rightly submits that there is no material in the compilation of the charge-sheet which would remotely indicate that present applicant is a member of syndicate of Vijay Kedare or that he had hatched any conspiracy to amount assault upon Mangesh Vichare on 04/10/2012. Applicant has been in custody since 18/06/2013. He has been in jail for more than 2 years. Prima facie this Court is of the opinion that in the present case, there is no incriminating material against the applicant and he is not likely to commit any offence while on bail.

9) Applicant is charge-sheeted for offence under section 307 of Indian Penal Code. The factual aspect is that present applicant was not present at the scene of offence. He is being charge-sheeted only because he was seen in the company of Vijay Kedare in remote past. The aspect of conspiracy has to be proved by adducing substantive evidence. Prima facie, it appears that there is no incriminating material against present applicant and hence, applicant deserves to be enlarged on bail. Hence, following order.

ORDER

(I) The application is allowed.

- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- and one or more local solvent sureties in the like amount.
- (ii) The applicant shall report to Antop Hill Police Station on 1st and 3rd Sunday of each month between 10 a.m. to 1 p.m. till conclusion of the trial.
- (iii) The applicant shall attend each and every scheduled date before the M.C.O.C. Special Court in M.C.O.C. Special Case No. 5 and 13 of 2013.
- (iv) Upon failure to attend any two consecutive dates either before police station or before the Special Court, the prosecution is at liberty to file an application seeking cancellation of bail.
- (v) The applicant shall not leave Mumbai and Thane till conclusion of the trial.
- (vi) The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.