

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2309 OF 2014**

Shri Ashok Pandharinath Mahadik	Applicant.
Versus	
The State of Maharashtra	...Respondent.

Mr. Prakash Naik i/by Mrs. Vrishali R. Raje, advocates for the applicant.
Mr. Y.M.Nakhwa, APP for the respondent-State.
PSI R.M.Gole attached to Shivajinagar P. Stn, Ambernath present.

CORAM : REVATI MOHITE DERE, J.

DATED : March 3, 2015

P.C.:

1 Heard the learned counsel for the applicant and the learned
APP for the respondent-State.

2 By this application, the applicant seeks his enlargement on bail
in connection with the C.R.No.169 of 2014, registered with the
Shivajinagar Police Station, Ambernath, for the alleged offences
punishable under Sections 302, 120B, 201 of the Indian Penal Code,
1860 read with Sections 4 and 25 of the Arms Act and Sections, 37(1)and
135 of the Bombay Police Act.

3 According to the prosecution, the incident in question had taken place on 29.3.2014, sometime between 9 pm to 11 pm. The first informant Gurunath Pandurang Bhoir, father of the deceased was informed on phone that his son Sagar, was lying on the road in an injured condition. Pursuant to which, the complainant went to the spot and thereafter lodged an FIR, as against unknown persons.

4 The learned counsel for the applicant contended that there is no direct evidence in the present case. He submitted that the prosecution case rests entirely on circumstantial evidence. He submitted that admittedly, even according to the prosecution, the applicant was not present at the spot of the incident; there is no recovery of any article at his instance nor is there is any evidence of last seen against him. The only evidence alleged as against the applicant , is the evidence of CDR i.e. calls exchanged between the present applicant and accused nos.5 and accused no.2. He submitted that there is no audio conversation recorded and hence merely on the basis of calls exchanged, the applicant cannot be denied bail.

5 The learned APP opposed the bail application. He accepts that the only evidence against the applicant is CDR, exchanged between him

and 2 other co-accused. He contended that the applicant has been implicated in the present case, as a co-conspirator. He submitted that the applicant has 4 antecedents i.e. one case of 2004 and 3 cases of 2007, 2008 and 2009. The learned counsel for the applicant submitted that as far as the case of 2004 is concerned, the applicant has been acquitted and the remaining 3 cases are prior to 2010.

6 Perused the charge-sheet. No motive has been alleged as against the present applicant. There is no recovery at his instance nor any other circumstantial evidence, except the call detail records. The call detail records also do not show that the applicant was present at the spot where the alleged incident took place. Merely because there are antecedents, that would not be a ground to reject the applicant's application for bail. Investigation is complete and charge-sheet has been filed. Considering the antecedents of the applicant, strict conditions can be imposed on the applicant. Accordingly, the following order is passed:

ORDER

- (I) Application is allowed.
- (II) The applicant Ashok Pandharinath Mahadik is released on bail on executing PR Bond in the sum of Rs.50,000/- with one or two local solvent sureties in the like amount.

(III) The applicant to furnish his address where he intends to reside along with his mobile contact number immediately after being released. In the event of change of his address or mobile contact number, the same shall be informed to the Court seized of the matter as well as to the Investigating Officer of the Shivajinagar Police station of Ambernath.

(IV) Except for the purpose of attendance, the applicant shall not enter the jurisdiction of Shivajinagar Police Station, Ambernath.

(V) The applicant shall attend the Ambernath (East) police station every fortnight, on Saturday between 10 a.m. to 12.00 noon till the conclusion of the trial.

(VI) The applicant shall not tamper or influence or attempt to contact any of the witnesses in the said case.

(VII) The applicant shall not leave the jurisdiction of District: Thane and Mumbai City without the permission of the Court, which is seized of the matter.

(VIII) The applicant shall co-operate with the conduct of the trial.

(IX) If there are two consecutive defaults in appearing before the trial Court, the prosecution shall be at liberty to apply for cancellation

of bail.

(X) The applicant shall file an undertaking in the trial Court with regard to the aforesaid condition nos. (III) to (IX) within one week of his release.

(XI) If there is any breach of any of the undertaking, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

7 The aforesaid observations are prima-facie, and the learned Judge shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

8 The application is allowed in the aforesaid terms and is accordingly disposed of.

9 Parties to act on an authenticated copy of this order.

REVATI MOHITE DERE J.