

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1642 OF 2015

Sham Jalindar Gaikwad

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. P.R. Arjunwadkar for the Applicant.

Mr. Rajesh More, APP for the Respondent - State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 11th DECEMBER, 2015.

P. C. :

This is an application for anticipatory bail filed by the aforesaid Applicant in apprehension of his arrest in C.R. No.96 of 2015 registered with Bhosari Police Station, Pune, for the offences punishable under sections 302, 143, 144, 147, 148 and 149 r/w. section 34 of the IPC and section 4 (25) of the Arms Act and section 37 (1) r/w. 135 of the Mumbai Police Act and section 3(1) (I), 3 (4) of the MCOC Act.

2. One Ramesh Dhondiba Waghmare had lodged FIR dated 26.3.2015 alleging that some unknown persons had caused death of

his brother Ganesh. Pursuant to the said FIR the aforestated crime was registered against unknown persons. In the course of the investigation six persons came to be arrested on 27.3.2015.

3. The records prima facie reveal that the name of accused reflected for the first time in the remand application of June-2015. The Applicant therefore, filed an application for anticipatory bail before the Sessions Judge, Pune. The said Application was dismissed vide order dated 20.10.2015. The Applicant has therefore, filed the present application under section 438 of the Criminal Procedure Code.

4. The learned counsel for the Applicant has submitted that there is no prima facie material to show the involvement of the Applicant in the said crime. He has further submitted that the Applicant is a college student and has been attending college regularly. He therefore, claims that there is no merit in the contention that the Applicant herein was absconding.

5. The learned APP submits that the Applicant is involved in causing death of one Ganesh Waghmare. He has further submitted that the provisions of MCOC Act are made applicable and the gravity of

the offence would not justify grant of bail. The learned APP further submits that the Applicant was absconding and if released on bail, he will not be available for trial.

6. I have perused the records and considered the submissions advance by the learned counsel for the Applicant and the learned APP for the Respondent -State. The records reveal that the only material against the present Applicant is the statement of Jotam Phartale, who has stated that on the relevant date he had seen the present Applicant alongwith the co-accused inflicting injuries on the deceased -Ganesh by means of swords and sickle. It is to be noted that the said statement was recorded almost three months after the incident. Apart from the said statement there is no material to indicate that the Applicant herein was involved in the said crime. Though the provisions of MCOC Act are invoked, there is no prima facie material to show that the Applicant has any criminal antecedent or that he is the member of the gang headed by Mahesh Dongare.

7. The prosecution claimed that the Applicant herein was absconding. A perusal of the case diary do not indicate that any serious efforts were taken to trace the Applicant and/or to apprehend

him. The Applicant is a young boy of 19 years of age is a college student. The arrest and detention of the Applicant can seriously jeopardies his future and can turn him into a hardened criminal. Moreover, the Applicant being a permanent resident of Bhosari, District- Pune, there is no possibility of the Applicant absconding.

8. Considering the above facts, the application for anticipatory bail is granted on the following terms and conditions:-

(I) In the event of arrest of the Applicant in C.R. No.96 of 2015 registered with Bhosari Police Station, Pune, the Applicant be released on bail on furnishing bail bonds of Rs.25,000/-(Rupees Twenty Five Thousand only) with two sureties in the like amount to the satisfaction of the Sessions Court, Pune.

(II) The Applicant shall report to the Investigating Officer initially for a period of seven days from 10.00 a.m. to 12.00 p.m. and further as and when required by the Investigating Officer for the purpose of interrogation.

(III) The Applicant shall not interfere with the complainant or witnesses in any manner.

(IV) The Applicant shall not leave the jurisdiction of the Pune District without prior permission of the Trial court till filing of the charge-sheet.

(ANUJA PRABHUDESSAI, J.)