

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

BAIL APPLICATION NO. 341 OF 2016

Nilesh Bansilal Ghaiwal  
S/o Shri Bansilal Ghaiwal  
R/o Dhyaneswar Colony,  
Shastri Nagar, Kothrud  
Pune-411029.

... Applicant

V/s.

State of Maharashtra  
(Through office of the Public Prosecutor)  
High Court, Mumbai  
Dattawadi Police Station, Pune.

... Respondent

Mr. Vinit Dhanda i/b. Mr. Ajay Basutkar for the applicant.  
Mr. D.A. Adsule, APP for the State.

**CORAM : NARESH H. PATIL AND  
PRAKASH D. NAIK, JJ.**

**RESERVED ON: 28<sup>th</sup> June, 2016.  
PRONOUNCED ON: 4<sup>th</sup> July, 2016**

**ORDER [ Per Naresh H. Patil, J.] :**

The applicant Nilesh B. Ghaiwal prays for grant of bail.

2. It is submitted that on 8<sup>th</sup> May, 2010 Complainant alongwith his friends had gone to Dattawadi Police Station for release of some accused Shinde. In the midnight police released the accused Shinde as a result of which Atul alias Pappu Kudale and his friends were returning to their house on the way, the informant Atul heard sound of firing. He realized that bullet had passed brushing his right shoulder. It is alleged that Atul kudale saw the applicant and his associates who were on 4-5 motorcycles following the complainant and his friends. It is the case of the Complainant- Atul that the applicant fired at him and one accused namely Santosh Gawade threw a chopper at him but the complainant escaped the attack. In the said attack the brother of the complainant Sachin Kudale got injured and due to injury Sachin was taken to hospital. He was declared dead by the doctors in the hospital.

3. On 9<sup>th</sup> May, 2010 the crime was registered in Dattawadi Police Station being FIR No.82/2010 under Sections 143, 147, 148, 149, 302, 120(B) of I.P.C. and Section 3, 4, 25 of Arms Act along with Section 37(1) with 135 of Mumbai Police Act and under Section 3(I)(II), 3(2), 3(4) of MCOC Act. On 16<sup>th</sup> July, 2010 detailed report seeking permission to invoke relevant provisions of MCOC Act was submitted by Senior Police Inspector to Additional Commissioner of Police, Crime, Pune. On 20<sup>th</sup>

July, 2010 the applicant was arrested for the aforementioned offences and since then he is in jail without any trial. On 22<sup>nd</sup> October, 2010 the Police Commissioner of Pune city permitted the prosecution of the accused under Section 3(I) (II)(III), 3(2), 3(4) of M.C.O.C. Act.

4. On 25<sup>th</sup> September, 2012 the applicant filed an application for grant of bail before learned Special Court, Pune which came to be rejected. The applicant approached High Court against the said order by filing criminal appeal No. 886/2013. On 7<sup>th</sup> October, 2013, said appeal came to be dismissed.

5. The applicant preferred a Special Leave Petition (Criminal) No. 10511/2013 challenging the judgment passed by the Bombay High Court. The Special Leave Petition was dismissed by the Apex Court on 8<sup>th</sup> August, 2014.

6. On 1<sup>st</sup> January, 2006 the applicant made another application for grant of bail to the Sessions Judge, Pune which came to be dismissed. Hence, the petitioner preferred the present application.

7. From the record placed before us, we noticed that application was

initially listed before the learned Single Judge in the month of March 2016 and was being heard from time to time. On 21<sup>st</sup> April, 2016 the learned Single Judge Smt. Justice Revati Mohite Dere passed following order:

“ Learned APP has produced a copy of the order dated 07.10.2013 passed by the Division Bench of this Court (CORAM : P.V.HARDAS & P.N.DESHMUKH, JJ.) passed in Criminal Appeal No.886 of 2013 by which the Appellant's Appeal seeking his enlargement on bail was dismissed. The said Criminal Appeal has been dismissed on merits. The Applicant is again seeking his enlargement on bail both on merits and on the ground of delay in the commencement of the proceedings. Since his Criminal Appeal seeking bail has been dismissed by a Division Bench of this Court, it would be appropriate that this Bail Application also be placed before a Division Bench, taking up this assignment. Registry to take steps accordingly.”

8. The matter was placed before us. Learned Counsel appearing for the applicant submitted that out of the arrested accused persons, all accused were granted bail except the applicant herein. The accused was arrested on 20<sup>th</sup> July, 2010. After filing of chargesheet, charge was framed on 24<sup>th</sup> February, 2016. Since last 6 years the applicant is behind the bars, on that ground, the applicant deserves to be released on bail. , according to learned Counsel. Learned Counsel further submitted that on principle of parity the applicant deserves to be released on bail as other accused persons were released on the identical facts of the case. Learned Counsel further submitted that provisions of MCOC Act cannot

be made applicable to the applicants. He was not member of any syndicate or gang. On these grounds the learned Counsel prayed that at least now applicant be released on bail. Learned Counsel furnished copy of Roznama of the trial court. The counsel submitted that there are 110 witnesses, it will take considerable long time for trial to complete. Reliance was placed by the learned Counsel on the judgment of the Supreme Court in the case of ***Kunhayameed & others v/s. State of Kerala & anr. {(2000) 6 Supreme Court Cases 359}***.

9. Learned APP has placed on record police report dated 28<sup>th</sup> June, 2016. It was submitted that the Prosecutor pointed out before the learned Single Judge that the Division Bench had earlier rejected the bail application of the applicant. The issue as regards the parity was raised before the Division Bench in Criminal Appeal No. 886/2013 for bail filed by the present applicant. Therefore, said issue is not open for consideration. Learned Prosecutor further submitted that there is no change of circumstances so that the petitioner could pray for releasing on bail. According to Prosecutor there was no delay in conducting trial from the prosecution side. 18 times the Public Prosecutor was present in the trial court. Some of the accused on bail were not attending the trial and due to such reasons the trial was delayed. The Prosecutor submitted

that trial of the applicant has now been separated and next date is fixed on 1<sup>st</sup> July, 2016. The Prosecutor submitted that application deserves to be rejected.

10. We have perused the record placed before us, considered the submissions.

11. The applicant had filed Criminal Appeal no. 886/2013 against the order passed by the trial court rejecting his bail application. The appeal came to be dismissed by the reasoned order on 7<sup>th</sup> October, 2013. The issues raised herein like non-application of provisions of MCOC, grant of parity and allegation regarding applicant being a gang leader were all considered by the Division Bench.

12. In the facts as these issues were considered by the Appellate Court, they need not be reconsidered again. The another issue by the applicant was about the delayed trial. We have perused the roznama of the trial court. It was submitted by the prosecutor that delay in conducting the trial is occasioned on several other grounds. The prosecution is willing to go on with the case. Some of the accused who are on bail are not available for trial. It is also submitted that trial of the accused has

been separated.

13. The applicant has challenged the judgment of the Division Bench in the Apex Court by filing a Special Leave Petition. The Apex Court in Special Leave to Appeal (Cril.) No. 10511/2013 by an order dated 8<sup>th</sup> August, 2014 passed following order:

“ We find no reason to entertain this Special Leave Petition, which is, accordingly, dismissed.

We hope that the State shall make all possible efforts to conclude the trial at an early date.”

14. We have perused the case laws cited by the petitioner and the relevant record placed before us. On the ground canvassed before us, we are not inclined to consider the application for grant of bail to the applicant. We do not find any material change in the circumstances to consider the bail application. There is no merit in the application. Bail Application stands rejected.

**(PRAKASH D. NAIK, J.)**

**(NARESH H. PATIL, J.)**