

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1387 OF 2016

Anil Bapu Mane	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. A.P.Mundargi, Senior Counsel i/b. Ms. Nagma Tandon for the applicant.

Mr. S.S.Pednekar, APP, for the State.

CORAM:SMT.SADHANA S.JADHAV, J.
DATE : 23rd December, 2016.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 29.9.2014 in Crime No.537 of 2014 registered at Hadapsar Police Station for the offences punishable under Sections 143, 147, 148, 149, 302, 352, 201 of the Indian Penal Code and Sec. 4(25) of Arms Act and Sec. 37(1) of Bombay Police Act r/w 135 of Arms Act and under Sec. 3(1)(2), 3(2), 3(4) of MCOCA.

2. The facts of the case in a nutshell are as follows :-

(a) On 27.9.2014, Manoj Kadam lodged a report at the police station. That he happens to be a friend of Sachin Shelar. That he was in inimical terms with the group of Amit Phalle and Anil Rakh. According to the informant, on 8.9.2014, Amit Phalle and Anil Rakh had threatened Sachin of dire consequences. On 27.9.2014, Manoj Kadam was in the company of Sachin Shelar. They had been to Papade Vasti. That Manoj Kadam had gone for his personal work, whereas Sachin was standing on the road. When Manoj returned, Sachin informed him that he had seen Amit Phalle, Anil Rakh, Dhanaji Vanagade, Ashutosh alias Pinkya Buttepatil Patil and 4 – 5 unknown persons proceeding towards the Railway Line. At that juncture, Manoj and Sachin decided to cross through Railway Line and thereafter, Amit Phalle had obstructed Manoj Kadam and Sachin Shelar and mounted assault upon Sachin with deadly weapons. That Manoj had taken him to the hospital, where he was declared dead.

2. Perused the papers of investigation. There is no doubt that it is a brutal murder. It is pertinent to note that the applicant

herein has not been named in the first information report by Manoj Kadam. In the course of course of investigation, the investigating agency had recorded statement of Vijay Kale, Sandeep Chavan and Pramod Shelar. According to Pramod Shelar, he knows the present applicant as he belonged to group of Amit Phalle. According to him, the whole group of Amit Phalle was against Sachin Shelar. He has disclosed on 27.9.2014 at about 9 p.m. when he was returning home he had seen Amit Phalle and Dhanaji on motor cycle. He had also seen two cars crossing him. He had then learnt that there was an assault upon Sachin and that he was taken to Sassoon Hospital. According to him, deceased Sachin was on cross terms with the group of Amit Phalle and that the applicant is an associate of Amit Phalle. The investigating agency had then recorded statement of Vijay Kale who has disclosed that on 27.9.2014, at about 8 p.m., when he was in his office, he had seen 10-12 boys discussing something amongst themselves. Out of curiosity, he had concealed his identity and had attempted to hear the discussion and from their discussion and gestures, he had drawn an inference that they were about to commit murder of some person. On the same night, he had learnt that the homicidal death of Sachin from his nephew Akashay

and thereafter, he had drawn an inference that the group of Amit Phalle to which the present applicant belongs has caused the murder. The I.O. has also recorded statement of Sandeep Chavan who is also reiterated the contentions of the other witnesses. The statement of Sandeep Chavan and Vijay kale have been recorded on 4.10.2014.

3. The learned Senior Counsel submits that both of them are got up witnesses and in the course of investigation, test identification parade was conducted. It is pertinent to note that Pramod Shelar and Vijay Kale have identified the present applicant but it needs to be taken into consideration that both the witnesses are not eye-witnesses to the alleged incident. The eye-witnesses are Manoj Kadam and Sandeep Chavan and they have not identified the present applicant.

4. The learned APP submits that there is recovery of blood stained clothes from the co-accused Dhanaji at whose instance the clothes of the co-accused have been recovered. The conclusion of the memorandum shows that Article Nos. 1 and 2 belong to Ashutosh Buttepatil. Article Nos. 3 and 4 are of Amit Ghadge. Articles 5 and 6

are of Anil Somwanshi and articles 7 and 8 are clothes of Dhanaji Vanagade. the said recovery cannot be converted into admissible evidence for the simple reason that the conclusion of the memorandum does not indicate that the clothes of the present applicant have been recovered. Moreover, the recovery panchnama also shows that there are only 8 articles.

5. The applicant is being prosecuted under the provisions of MCOCA. The learned APP has fairly submitted upon instructions that the applicant has no criminal antecedents. he has not been charge sheeted along with Amit Phalle in the past. This is the first cognizable offence registered against the present applicant. It is in these circumstances that this Court can safely infer that upon being enlarged on bail, the applicant may not indulge into similar offences. Moreover, there is no material on record to indicate that he belongs to the organization of Amit Phalle. The learned APP submits that more than two charge sheets have been filed against Amit Phalle and others, but the applicant is not an accused in any of those cases.

6. The learned Senior Counsel submits that the sanctioning

authority has not applied its mind while granting sanction to the prosecution of the present applicant under the provisions of MCOCA. The learned counsel has relied upon the Judgment of the Apex Court in the case of **State of Maharashtra Vishwanath Maranna Shetty (Criminal Appeal No.1689 of 2012)**. It is observed as follows :-

“Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on reasonable grounds.”

There is no incriminating material against the applicant on record which could be converted into admissible evidence and can be relied upon for convicting the accused in the present case and, therefore, this Court is inclined to enlarge the applicant on bail.

7. It is made clear that the observations are restricted to an application under Section 439 of Cr.P.C. and based on the material in discharging the applicant. The same shall not be taken into

consideration for deciding the application under the charges of MCOCA or any other sections of IPC.

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on his furnishing P.R. Bond in the sum of Rs.50,000/- and one or more solvent sureties in the like amount.
- (iii) The applicant shall not enter the jurisdiction of Hadapsar Police Station till the conclusion of trial.
- (iv) The applicant shall report to Lashkar/Cantonment Police Station on every Sunday between 10.30 a.m. to 12 noon till conclusion of the trial.

The application stands disposed of.

(SMT. SADHANA S.JADHAV, J.)