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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 589 OF 2017

1] Akash Anil Potghan
2] Omkar Raju Chaudhari
Vs.

..Applicants

The State of Maharashtra

..Respondent

Mr. P.K. Dhakephalkar i/b Nilesh Kadam for Applicants.
Ms. A.A. Takalkar, APP for State.
Mr. Prabhakar T. Khanse, Police Hawaldar, Pimpri Police Station, Pune
present.

CORAM: A.S. GADKARI, J.

DATE : 12th October 2017.

P.C.

1] This is an application under Section 439 of Cr. P.C. for bail in CR No.500 of 2015 dated 17.4.2017 registered with Pimpri Police Station, Pune under Section 302, 120(B), 506(2) r/w 34 of the Indian Penal Code, under Section 3(25), 5(25) of Arms Act, under Section 37(1) r/w 135 of Bombay Police Act and under Section 3(1) (i), 3(2), 3(4) of Maharashtra Control of Organized Crime Act, 1999 (MCOC Act.).

2] It is the prosecution case that, Amol Wahile is the head of Organised Crime Syndicate. The name of deceased is Avinash Tekawade. That father of Amol Wahile had contested election of Municipal Council in the year 2007 against deceased Avinash Takawade from Ward No.40 and in the said election an independent candidate Maruti Bhapkar had succeeded. That it was the grudge in the mind of Amol Wahile that as deceased Avinash Tekawade contested the said election, there was division of votes and benefit of which was taken by the said independent candidate Maruti Bhapkar. That accused No.1-Amol Wahile had erected an illegal cattle shed on the land belonging to Pimpri Chinchwad Corporation. The Corporation had issued a notice dated 1.8.2015 to Amol Wahile for its removal. It was belief of accused No.1 Amol Wahile that the said notice was issued by the Corporation at the instance of deceased Avinash Tekawade and therefore he was also having grudge against deceased Avinash Tekawade on that count also. It is the further prosecution case that accused No.1 Amol Wahile was harbouring a belief that supremacy of deceased Avinash Tekawade in the local area was increasing and therefore accused No.1 Amol Wahile in conspiracy with other accused persons decided to eliminate Avinash Takawade and in furtherance of their conspiracy on 3.9.2015 at about 1.45 p.m accused No.1 Amol Wahile,

accused No.2 Kishor Bhigwankar and accused No.3- Balaji Shinde committed murder of Avinash Tekawade near his house. The first information report is lodged by Smt. Sujata Tekawade, wife of deceased against two unknown persons. During the course of investigation, applicant No.1 Akash Potghan and Applicant No.2 Omkar Chaudhari came to be arrested on 17.11.2015 and 30.11.2015 respectively. The Investigating Officer related that, the present crime is committed by the Organised Crime Syndicate headed by Amol Wahile and therefore after obtaining prior approval under MCOC Act, applied the provisions of MCOC Act to the present crime. After completion of investigation, the Competent Authority granted sanction under Section 23(2) of MCOC Act and thereafter police have submitted chargesheet.

3] As far as the present applicants are concerned, it is the prosecution case that on the date of incident i.e. on 3.9.2015, the applicants kept watch on the movements of deceased Avinash Tekawade and applicant No.2 Omkar Chaudhari provided the relevant information to accused No.2 Kishor on his mobile phone. Thus it is the precise case of the prosecution that, the applicants assisted accused nos.1, 2 and in keeping watch on deceased Avinash Tekawade on the date of incident and provided relevant information to accused No.2 Kishore Bhigwankar.

4] Mr. Dhakephalkar, the learned Senior Counsel appearing for the applicants submitted that, as a matter of fact, the applicants were the employees of accused No.1 Amol Wahile who was conducting a business of cable operator/Cable Network provider in the said area and is owner of Siddhivinayak Cable and therefore the presence of applicants at the office/shop of accused No.1 Amol Wahile is nothing but a natural thing and nothing unusual about the same. He submitted that as the applicants were employees of accused No.1 Amol Wahile, they have been roped as accused in the present crime. He further submitted that there is no material available on record which would even remotely connect the applicants with the alleged organized crime syndicate headed by Amol Wahile and whatever evidence has been adduced by the prosecution fails short to connect the link of applicants with the present crime and therefore the applicants may be released on bail.

5] In opposition the learned APP submitted that, the CCTV footage seized by the police shows that, prior to, at the time of offence and thereafter the applicants were present near the scene of offence. She further submitted that the conduct of applicants after commission of offence also requires to be taken into consideration. That after commission of offence, applicant No.1 Akash had contacted witnesses Ajay Mhetre and

Harshad Salunkhe and had demanded money for his personal work. She submitted that applicant No.2 Omkar was not available at his residence for about four days after the date of incident and therefore adverse inference under Section 8 of Evidence Act can be drawn about their involvement in the present crime. She therefore prayed that the present application may be rejected.

6] At the outset, it is to be noted here that, though the CCTV footage showing the presence of applicants near the scene of offence, is seized by the Investigating Agency in the present crime, however, till date the Investigating Agency it has not produced a certificate as contemplated under Section 65-B of Evidence Act to take the said piece of evidence into consideration and therefore the said piece of evidence has to be kept aside from consideration at this stage. The record further indicates that, statements of co-accused Amol Wahile the alleged head of organised crime syndicate and Kishor Bhigwankar are recorded under Section 18 of MCOC Act and it appears that even those two statements are silent about the association of the present applicants with the alleged organized crime syndicate. In their statements, witnesses namely Ajay Mhetre and Harshad Salunkhe dated 15.12.2015, have mentioned that on 3.9.2015 in the afternoon after 3.30 p.m., they received phone call from applicant No.2

requesting them to provide some money for his personal use and the said two witnesses stated about their hearsay knowledge of murder of Avinash Tekawade.

7] Thus after taking into consideration the material available on record, it appears that the applicants were the employees of accused no.1 Amol Wahile and there is no other material on record to connect the applicants with the alleged organised crime syndicate allegedly headed by Amol Wahile. It further prima facie appears that the material available on record is not sufficient to draw a conclusion that the applicants with the actual knowledge and/or having reason to belief that the applicants were engaged in assisting in any manner Amol Wahile the alleged head of organised crime syndicate and there are reasonable grounds to believe that the applicants are not guilty of offence under the said Act.

In view thereof, the applicants can be released on bail.

Hence, the following Order:

(i) The applicant be released on bail in CR No.500 of 2015 registered with Pimpri Police Station, Pune on on their furnishing PR bond of Rs.25,000/- each with one or two separate solvent local sureties in the like amount.

(ii) After their release from the jail, the applicants shall attend

the concerned Police Station once in month i.e. on every 1st Monday of the said month between 11.00 a.m. to 2.00 p.m.

(iii) The applicants shall also attend all the dates before the Trial Court.

(iv) Any two consecutive defaults in complying with the aforesaid conditions, shall attract the provisions of cancellation of bail.

(v) Applicants shall not tamper with the evidence and/or influence the prosecution witnesses.

8] Application is allowed in the aforesaid terms.

(A.S. GADKARI,J.)