

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION No. 777 OF 2016

Ramdas Govind Wanjale	... Applicant
Vs.	
The State of Maharashtra	... Respondent

WITH
BAIL APPLICATION No. 673 OF 2016

Amit Suresh Kadam	... Applicant
Vs.	
The State of Maharashtra	... Respondent

WITH
BAIL APPLICATION No. 1231 OF 2016

Pravin Popat Shelar	... Applicant
Vs.	
The State of Maharashtra	... Respondent

Mr. A.P. Mundargi, Senior Advocate i/b. Mr. Jayant J. Bardeskar, Advocate for the applicant in BA/777/2016.

Mr. Satyavrat Joshi, Advocate for the applicant in BA/673/2016.

Ms. Anjali Patil, Advocate for the applicant in BA/1231/2016.

Mr. Deepak Thakery, APP for the respondent/State.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 8th February, 2017.

P.C.:

As the issues involved in these three Bail Applications are similar, they are heard together and disposed of by a common order.

2. The applicants/accused are prosecuted for the offences punishable

under sections 364A, 365, 385, 395 of Indian Penal Code and under section 3(1)(i), 3(2) and 3(4) of M.C.O.C. Act in C.R. No. 119 of 2015 registered with Saswad Police Station at the instance of Meera Sanjay Pokale on 4th May, 2015.

3. It is the case of the complainant that one Amol Yewale on 1st May, 2015 contacted her and told her that she should transfer her land at Dhayri in his name. On 2nd May, 2015 co-accused Amol contacted her son-in-law and told that he should arrange marriage of his sister-in-law with him and 3 acres of land of his mother-in-law at Dhayri should be transferred in his name otherwise he will kill him and his mother-in-law. The son-in-law of complainant informed this to the complainant. Thereafter Amol threatened that he would take away her son. On 4th May, 2015 at around 12.30 p.m. she received information from her brother Pandurang Kamthe that Amol Yewale along with his 10 to 12 associates kidnapped Sachin, who is son of her brother Pandurang in Indica car. Thereafter she went to police and lodged complaint. The police immediately started investigation along with complainant and they could find two vehicles near Jejurinaka wherein kidnapped Sachin was found along with other persons. The police apprehended the applicant Pravin Shelar and co-accused on the spot and subsequently they arrested applicant/accused Amit Kadam on 2nd August, 2015 and applicant/accused Ramdas Wanjale on 6th August, 2015. The

applicants are in prison since then. Hence, these Bail Applications.

4. The learned senior counsel Mr. Mundargi for applicant Ramdas Wanjale, learned counsel Mr. Satyavrat Joshi for Applicant Amit Kadam and learned counsel Ms. Anjali Patil for Pravin Shelar have submitted that these applicants/accused have not committed any offence and they are arrested on suspicion. There were never the members of any syndicate or of Pappu Uttekar. There is no evidence against them. All the learned counsel have submitted that there are contradictions in the FIR of Meera Sanjay Pokale, statement of Pandurang Krishna Kamthe and their supplementary statements recorded after Test Identification Parade. The learned counsel argued that, as per the FIR and statement of Sachin, he was kidnapped by Amol Yewale and his 10 to 12 associates in Indica car but no two vehicles were involved in the beginning.

5. The learned senior counsel Mr. Mundargi appearing for applicant/accused Ramdas Wanjale and learned counsel Mr. Satyavrat Joshi appearing for Amit Kadam have submitted that as per the case of Sachin and Pandurang, Amol Yewale and his 10 to 12 associates took away Sachin in the car and two associates took away motorcycle of Sachin and both the applicants/accused were not caught by the police on the spot. The learned counsel have submitted that Test Identification

Parade was conducted on 2nd September, 2015 in which Sachin identified Amit Kadam and Pandurang identified Ramdas Wanjale, however, they did not attribute any role at the time of identification. It is further pointed out that supplementary statements of Pandurang and Sachin were recorded on 9th September, 2015. Though the witnesses have identified applicants/accused Amit Kadam and Ramdas Wanjale, they did not say a word about conducting of Test Identification Parade. Thus, the evidence of Test Identification parade is doubtful. The learned senior counsel further submitted that in the supplementary statement recorded on 9th September, 2015, the witnesses have made improvement that the accused have arrived with two vehicles. The learned senior counsel submitted that as per the statement of Pandurang, two vehicles, i.e., one Indica car bearing no . UA-07-Q-2833 and Maruti van bearing no. MH12-BG-2146 were involved, however the police arrested the applicant/accused Ramdas Wanjale on suspicion and his car was also seized by the police. Applicants/accused Ramdas Wanjale and Amit Kadam were not involved in the crime and were not arrested on the spot by the police.

6. The learned counsel Ms. Patil while appearing for applicant/accused Pravin Shelar has submitted that this applicant/accused is falsely implicated in the case. He was not concerned with the gang and he was not involved in any offence committed by syndicate of Pappu Utekar. She

submitted that it was not a case of kidnapping. The complainant in fact had come to meet Amol Yewale.

7. The learned counsel for the applicants/accused have further relied on the supplementary statement of Sachin recorded on 9th September, 2015 wherein he has mentioned that he was forcibly kidnapped in Indica car by Amol Yewale and they took him to Jejurinaka and they were waiting for his aunt Meera Pokale for a long time. They further submitted that applicants/accused do not have criminal record.

8. Learned APP opposed the Application and submitted that applicants/accused are members of gang of Pappu Uttekar alias Kiran Damu Renuse who was present and arrested on the spot and thus, there is sufficient evidence against them to hold that they are members of the gang. He relied on the Test Identification Parade wherein accused Ramdas and Amit Kadam were identified by Pandurang and Sachin respectively. He submitted that in the offence under section 364A where life imprisonment can be given, a threat to life was given to Sachin when he was kidnapped, thus, the offence is serious. The applicants/accused are prosecuted for the offence committed under MCOC Act and therefore there is bar under section 21 of MCOC Act to grant bail. In support of his submissions, learned APP relied on the ratio laid by the Hon'ble Supreme

Court in the case of **State of Maharashtra vs. Vishwanath Maranna Shetty, reported in (2012) 10 SCC 561.**

9. Perused the FIR, statements of witnesses and supplementary statements. The principal offence is under section 364A of Indian Penal Code. As per the case of the prosecution, co-accused Amol Yewale wanted to marry daughter of the complainant and he also wanted to grab the land of the complainant. Thus, it appears that principal accused Amol Yewale has personal interest in the demand and has grievance against the complainant. As per the case, Sachin was kidnapped by the applicants/accused when he was in the custody of his father Pandurang and thereafter they called his paternal aunt for discussion. As per the supplementary statement of Sachin, they all awaited for her at Jejurinaka and she also arrived there in police van and police found Sachin and apprehended nearly 10 persons wherein applicant/accused Pravin Shelar along with Amol Yewale and Pappu Utekar were found. Sachin has not sustained any grievous injury.

10. The applicants/accused Ramdas Wanjale and Amit Kadam were not found on the spot. As per the case of the prosecution, they fled away from the spot. Sachin and Pandurang have identified Ramdas Wanjale and Amit Kadam, however, they did not mention this fact when their

supplementary statements were recorded immediately a week after Test Identification Parade. The cause for identification is also not mentioned in Test Identification Parade.

11. In the case of **State of Maharashtra vs. Vishwanath Maranna Shetty**, the respondent along with co-accused were prosecuted for the offence of murder under section 302 r/w. section 120B of Indian Penal Code and under relevant sections of M.C.O.C. Act. The respondent-Vishwanath Shetty had received the amount which was to be given to the shooter for killing and he accordingly handed over that money to the actual shooter. On facts, the present case is distinguishable considering the facts and manner in which the offence is committed. In the case of **Vishwanath Shetty**, the Hon'ble Supreme Court has observed thus-

“While dealing with a special statute like MCOCA, having regard to the provisions contained in Section 21(4) of MCOCA, the Court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organized crime either directly or indirectly, The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea.”

12. I have applied these two criteria in the present matter and also took into account that applicants/accused do not have any criminal record. Thus, I am satisfied that two conditions laid down under section 21 of MCOC Act will not come in the way of these applicants/accused while considering their Bail Applications. Hence, I grant bail to the applicants/accused on the following terms and conditions:

ORDER

- i) Applications are allowed.
- ii) The applicants/accused be enlarged on bail on furnishing P.R. Bond in a sum of Rs.50,000/- each with one or two sureties in the like amount;
- iii) The applicants shall not commit any criminal activity while on bail;
- iv) The applicants shall not be associated with the Pappu Utekar gang;
- v) The applicants shall attend all Court dates;
- vi) The applicants shall not abscond or leave India without prior permission of the Court and furnish their permanent address to the Investigating Officer alongwith documentary proof of their address;
- vii) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

13. The learned APP submitted that this order be stayed as he wants to challenge this order before the Hon'ble Supreme Court. Hence, the order is stayed till 2nd March, 2017.

(MRIDULA BHATKAR, J.)