

Anand

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

BAIL APPLICATION NO.1206 OF 2016

1. Swapnil Rajendra Shelke .Applicants
2. Suraj Rameshwar Chalak

Vs.

The State of Maharashtra .Respondent

Mr.P.R.Arjunwadkar, Advocate, for the Applicants
Mr.S.S.Pednekar, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 12.07.2017

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicants seek their enlargement on bail in connection with C.R.No.96 of 2015 registered with the Bhosari Police Station, Pune, for the alleged offences punishable under Sections 302, 143, 144, 147, 148, 149 of the Indian Penal Code, under Section 4(25) of the Arms Act, under Section 37(1) r/w 135 of the Bombay Police Act and under Sections 3(1)(i), 3(4) of the Maharashtra Control of Organised Crime Act (For short 'MCOCA').

3. Learned counsel for the Applicants submits that although

there are two eye witnesses to the alleged incident which took place on 26.03.2015, both the said eye witnesses cannot be believed. He submits that as far as the first eye witness – Pradeep alias Dadya Mohan Dabhade is concerned, the said eye witness has not named the Applicants, as the assailants. He submits that as far as the second eye witness – Jotam Phadtale is concerned, although, he has named the Applicants, his statement was recorded after almost three months of the incident i. e. on 15.06.2015. He further submits that there are certain inconsistencies between the said two statements of the eye witnesses. He further submitted that no specific role has been assigned by Jotam Phadtale to the Applicants and that the allegations are general allegations. He further submits that no identification parade has been held in the said case. According to the learned counsel, the Applicants have no antecedents and as such, have been falsely implicated in the MCOC case. He further submits that there was no material on record to apply MCOC to the facts of the present case. He submits that the sanction order is also bad-in-law. Learned counsel further submitted that the confessional statements recorded under the MCOC Act, are also identical and as such, no credence can be given to the same.

4. Learned APP opposes the Application. He submitted that eye witness i. e. Jotam Phadtale has specifically named the Applicants.

He further submitted that there is a confessional statement of two co-accused recorded under Section 18(1) of the MCOC Act. He relied on the confessional statements of co-accused Vicky Misal and co-accused – Rahul Basavraj Sarjan, in support of his submission. He further submitted that blood stained clothes have been seized at the instance of the Applicant No.1 – Swapnil Shelke and that the Applicant No.2 – Suraj Chalak has produced blood stained clothes, when he was in custody. He further submits that whether MCOC applies or not; whether the sanction order is bad-in-law, is a matter which will be considered by the appropriate Court.

5. Perused the papers. The Complainant is Ramesh Dhondiba Waghmare. He has alleged that the incident took place on 25.03.2015 and that some unknown persons had caused the death of his brother – Ganesh Waghmare. Accordingly, the FIR was lodged as against unknown persons. In the course of the investigation, the Applicants and other co-accused came to be arrested. It appears that there are two eye witnesses in the said case, who have witnessed the assault on deceased – Ganesh Waghmare. Eye witness – Pradeep Dabhade has in detail set out the assault on deceased – Ganesh Waghmare. Pradeep has named several accused and has stated that apart from the named accused, there were other persons. However, he did not know their names. He has

however stated, that he would be able to identify the said persons. He has stated that co-accused – Mahesh Dongare had assaulted Ganesh with a koyta on his head and that when Ganesh fell on the ground, all his associates assaulted Ganesh. He has stated that co-accused – Amol Salve, thereafter, picked up a stone and threw it on Ganesh's head. The evidence of Jotam Phadtale, also an eye witness shows, that he too had witnessed the said incident. He has specifically named the Applicants alongwith other co-accused. He has stated that co-accused – Mahesh Dongare assaulted Ganesh with a koyta on his head and thereafter, all the accused including the Applicants, who were armed with koyta and swords started assaulting the deceased – Ganesh. The post mortem report shows that the deceased has sustained as many as 12 injuries. The cause of death is stated to be stab injury on abdomen. Although the statement of Jotam Phadtale was recorded on 15.06.2015, after almost two and a half months, the fact remains, that he has named the Applicants. The evidentiary value of the said statement will be decided at the time of the trial. Apart from the aforesaid, there is recovery of blood stained clothes at the instance of Applicant – Swapnil Shelke. As far as, Applicant No.2 – Suraj Chalak is concerned, he has produced blood stained clothes whilst in custody.

6. Apart from the aforesaid material, there are confessional

statements of two co-accused i. e. Vicky Misal and Rahul Sarjan. A perusal of the confessional statements of the said co-accused shows, that the Applicants were the associates of Mahesh Dongare and the main co-accused. The confessional statement of Rahul Sarjan shows, that all of them belonged to a gang, of which Mahesh Dongare was the head. He has stated that all of them would threaten and intimidate the shop keepers and hotel owners, with their weapons and would extract money from them. Whether or not the MCOC Act is applicable or not, or whether the sanction order is bad-in-law, is a matter which will be decided by the appropriate Court. Prima facie, considering the material on record, this is not a fit case to enlarge the Applicants on bail. Hence, the Application stands rejected.

7. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

(REVATI MOHITE DERE, J.)