

...Applicant

The Asst. Commissioner of Police & Anr.

...Respondents

Mr. A. P. Mundargi, Sr. Counsel I/b Mr. J. J. Bardeskar for the Applicant

Mr. S. S. Pednekar, A.P.P for the Respondents-State

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 2nd AUGUST, 2017

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 296 of 2014 registered with the Vishrambaug Police Station, for the alleged offences punishable under Sections 302, 307, 143, 147, 148 of the Indian Penal Code and under Sections 3, 4(25) of the Arms Act and under Section 3(1)(i), 3(1)(ii), 3(2), 3(4) and 4 of the Maharashtra Control of Organized Crimes Act.
3. Learned Senior Counsel for the applicant submitted that there is no material to connect the applicant with the alleged offences. He

submitted that admittedly, the applicant was not present at the spot, when Amol Badhe (deceased) was assaulted and the complainant was injured and nor has the applicant been named in the FIR. He also assailed the confessional statement of the applicant as well as the confessional statements of other co-accused, recorded under Section 18 of the MCOC Act, in particular, the verification certificate, which shows the presence of the Government Pleader, at the time of recording of the confession. According to the learned Senior Counsel, there are no direct or indirect allegations as against the applicant, which show that the applicant is a member of the Crime Syndicate i.e. of the Gajanan Marne Gang. He submitted that the role of the applicant is post the incident i.e. the applicant is alleged to have helped the co-accused in surrendering before the Police. He further submitted that the CDR Chart, also does not show the presence of the applicant at the spot, where the conspiracy was allegedly hatched.

4. Learned A.P.P opposed the application. He submitted that there is enough material to show the complicity of the applicant in the commission of the offence. He relied on the statements of Prithviraj Sutar, Shankar Kamthe, Liyakat Shaikh, Sachin Takole, in support of his

submission, to show the complicity of the applicant. He further submitted that the applicant was present when the conspiracy was hatched and had also rendered financial assistance to the Gajanan Marne Gang, post the incident. He also relied on the confessional statement of the co-accused in support of his submissions. Learned A.P.P has filed an affidavit of Arun Badhe, Assistant Commissioner of Police, Crime Branch, Pune City, setting out the material as against the applicant. Learned A.P.P further submitted that the applicant had tried to escape from the Government Hospital, whilst in custody in the present C.R., pursuant to which, the Laxmipuri Police Station, Kolhapur, registered C.R. No. 186 of 2016 as against the applicant, alleging offences punishable under Sections 222, 224, 225, 210-P, 34 of the Indian Penal Code. Learned A.P.P has further submitted that there is every possibility of the applicant tampering and pressurizing the witnesses and endangering the life of the complainant and other witnesses, as well as of absconding.

5. Perused the papers. It appears that there are two gangs operating in the area; i.e. Gajanan Marne Gang and Amol Badhe (deceased) and others. It is alleged that the applicant is associated with the Gajanan

Marne Gang. It appears that there are cases and counter cases between the said groups i.e. Gajanan Marne Gang and Amol Badhe Gang. According to the prosecution, on 29th November, 2013 at about 4:45 p.m., the complainant-Santosh Kamble was proceeding triple seat, on a motorcycle alongwith Lakhan Lokhande and Amol Badhe (deceased), from the Vaikunth Cremation ground. It is alleged that when they reached near the Kalavati Temple, Navi Peth, Pune, the accused dashed into the complainant's motorcycle and thereafter, the accused fired several rounds at the complainant and the deceased. In the incident, Amol Badhe was shot by the accused, whereas, the complainant sustained bruise injuries, as he managed to escape. Both, the complainant and the deceased were taken to the hospital, where Amol Badhe was declared dead. Pursuant thereto, an FIR was lodged by the complainant-Santosh Kamble, as against Gajanan Marne and others. In the course of investigation, the applicant was arrested. The prosecution has recorded the statements of witnesses to show the applicant's association with Gajanan Marne (gang leader). Prithviraj Sutar, has stated that he knew the applicant since 2008, as the applicant had started a petrol pump at Paud Road, Kothrud. He has stated that in 2009, as the applicant was in financial difficulty, he had asked him for Rs. 10 lakhs.

He has stated that he gave a cheque of Rs. 10 lakhs to the applicant, from the SBI Account, as the applicant had assured to repay the said amount within a year. He has stated that after a year, when he asked the applicant for his money, the applicant told him that he would repay after his financial crisis was over. According to Sutar, in 2012, the applicant told him that he wanted to sell his petrol pump and hence, he decided to buy the same. Pursuant thereto, he and the applicant entered into an agreement for sale of the petrol pump on 16th July, 2012. He has stated that in terms thereof, he transferred Rs. 25 lakhs by RTGS to the applicant's account. He stated that despite the transfer, the applicant did not honour his commitment and complete the transaction. According to Sutar, when he demanded his Rs. 35 lakhs, the applicant started avoiding him. He has stated that when he went to meet the applicant at his petrol pump, the applicant was not there, but known gunda Gajanan Marne was sitting there and hence, he returned home. He has stated that when he enquired about Gajanan Marne's presence at the petrol pump, he learnt that the applicant had given the petrol pump to Gajanan Marne for conducting the same and that the applicant was Gajanan Marne's special man. He has stated because of this relationship, he did not ask the applicant for his 35 lakhs nor did he inform

the police. The statement of Shankar Kamthe shows that the applicant was Gajanan Marne's special man and that the applicant would keep a revolver with him and that he had once threatened him. The statement of Liyakat Shaikh shows that the applicant had given him his Petrol Pump, in February, 2014, for conducting the same, as the applicant could not find time to run the same. He has stated that he had given the applicant Rs. 5 lakhs, as deposit for running the said Petrol Pump. He had further stated that he had paid Rs. 1.5 lakhs, to the applicant as rent, for running the petrol pump, in the first month. Liyakat Shaikh has alleged that in the second month, the applicant asked him to pay Rs. 50,000/- to Gajanan Marne, out of the said amount of Rs. 1.5 lakhs, for the protection, Gajanan Marne offered the applicant, and as Gajanan had done him favour. The applicant also stated that since Gajanan Marne was with them, no creditors would dare to come near them. Pursuant thereto, Liyakat was giving Rs. 1 lakh to the applicant and Rs. 50,000/- to Gajanan Marne. According to Liyakat Shaikh, he had given his room on rental basis to Pappu Atul Kudale, a member of the Gajanan Marne Group. He has stated that in Pappu Kudale's birthday party, on 21st September, 2014, Gajanan Marne and other co-accused were present. According to the prosecution, the

conspiracy to kill Amol Badhe was hatched at this party. The confessional statement of the applicant shows, how he was in financial crisis, how he had taken money from several creditors; his association with Gajanan Marne; that he had asked Liyakat to pay Rs. 50,000/- to Gajanan Marne, etc. The confessional statement of co-accused - Sachin Takole (original accused No. 21) shows that the applicant was present at Pappu Kudale's birthday party, where the conspiracy to kill Amol Badhe was hatched.

6. Whether or not, the confessional statements are correctly recorded or not, or whether there is any procedural defect in recording of the verification statement, is a matter, which will be decided by the appropriate Court.

7. As far as the applicant's role is concerned, it appears that he was present at the time when the conspiracy to kill Amol Badhe was hatched and as such had knowledge of the same. It is evident from the statements of the witnesses, that the applicant had provided financial assistance even post the incident to the co-accused i.e. in helping them to surrender and assisting them to get bail. It also appears that the applicant

was in touch with the co-accused prior, at the time of commission of the offence and even thereafter, for the said purpose. Liyakat Shaikh's statement also shows that the applicant had asked him to pay a sum of Rs. 50,000/- per month to Gajanan Marne, for the protection that he offered, to the applicant. It also appears that the applicant tried to escape whilst in custody, pursuant to which, a C.R. was registered against him.

8. *Prima facie*, the material on record shows the complicity of the applicant in the crime. Apart from the same, the possibility of the applicant absconding, cannot be ruled out. The possibility of the applicant threatening or tampering with the witnesses, also cannot be ruled out.

9. Considering the aforesaid, this is not a fit case to enlarge the applicant on bail. The application is accordingly rejected.

10. Since the case is of 2014, the trial of the applicant is expedited. Learned Judge shall make an endeavour to decide the case, as expeditiously as possible.

11. 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.