

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

BAIL APPLICATION NO.1712 OF 2016

Rajendra Raosaheb Kamble ... Applicant

Vs.

The State of Maharashtra .. Respondent

Mr.Sachin H. Deokar for the Applicant
Mr.S.H. Yadav, APP, for Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JANUARY 24, 2017

P.C. :

1. The applicant/accused Rajendra Kamble has filed this application for bail as he is prosecuted for the offences punishable under sections 302, 352, 143, 147, 148, 149 r/w 120B of the Indian Penal Code and under section 4(25) of the Arms Act and under section 37(1) r/w 135 of the Maharashtra Police Act and under section 3(1)(I), 3(1)(II), 3(2), 3(4), 4 of the Maharashtra Control of Organised Crime Act, 1999. One Manoj Maruti Kadam, is the complainant who gave complaint on 27.9.2014 who has stated that his friend deceased Sachin Shahaji Shelar was conducting a business of tourism under the name of Sachin Travels. 2 to 3 years

prior to the date of the complaint, he was doing social work and became popular in Hadapsar area and therefore, the co-accused and the present applicant/accused were jealous of him. On 8.9.2014 at the time of Ganesh immersion procession, the complainant alongwith Sachin was chitchatting and one Amit Phalle and Anil Rakh threatened him of his life. It is the case of the prosecution that the co-accused and the applicant/accused are goons and have created terror in Kale Padal area. On 27.9.2014, when he was driving a two-wheeler Aactiva and Sachin was on the pillion seat, at around 8.45pm, the applicant/accused and the co-accused attacked the complainant and Sachin Shelar, the deceased. The target was Sachin, who was assaulted with number of blows of deadly weapons. Thereafter, he succumbed to the injuries on the same day. Manoj Kadam gave information to the police pursuant to which the offence was registered at C.R. No.537 of 2014 at Hadapsar police station on 2330 hours. The applicant/accused was arrested on 29.9.2014. since then, he is in the prison. Hence, this Bail Application.

2. The learned Counsel for the applicant/accused has submitted that the applicant/accused is innocent. As per the

remand reports, he is listed as accused No.9. The learned Counsel submitted that the applicant/accused has not committed any offence and has not participated in the assault. There is no evidence to that effect brought on record. He submitted that the chargesheet is filed by the Investigating Officer and as per the statements of the witnesses, only two witnesses identified the applicant/accused Raju Kamble. Besides this identification, nothing was recovered from the applicant/accused. He further pointed out that one blood stained cloth was recovered. However, one co-accused Anil Bapu Mane, who is attributed the same role and has been released on bail by order dated 23.12.2016 passed by this Court in Criminal Bail Application No.1387 of 2016.

3. The learned Counsel further argued on the point of application of MCOC Act that the applicant/accused was never associated with Anil Tukaram Somvanshi or any other person. He has submitted that he is not a member of any syndicate and, therefore, section 21 of the MCOC Act should not come in the way of allowing this application for bail. In support of this submission, he relied on the judgments in **Dinesh Bhondulal Baisware vs. The State of Maharashtra**¹; **Anil Bhaiyaji Raut vs. State of**

¹ 2016 ALL MR (Cri.) 3517

Maharashtra¹ and Anil Bapu Mane vs. The State of Maharashtra².

4. The learned Prosecutor has opposed the application and has submitted that six cases were pending against him. Though he is acquitted in five cases, one case at C.R. No.295 of 2010 registered at Swargate police station, is still pending. The learned Prosecutor submitted that this applicant is a threat to law and order and has close association and is a Member of the Gang of Anil Tukaram Somwanshi. He further submitted that two witnesses and Manoj Kadam have identified the applicant/accused as an assailant. He also relied on the statements of the witnesses and postmortem notes of Sachin.

5. Perused the complaint, all the documents placed before me by the defence so also by the prosecution. The complainant Manoj Kadam is an eye witness to the incident and has identified the applicant/accused at the time of Test Identification Parade. Similarly, in the statement of witness Sandeep Eknath Chavan, recorded on 4.10.2014, a specific role is attributed to the applicant/accused that he was holding sickle and was running after

¹ 2006 ALL MR (Cri.) 984

² Cr.Bail Application No.1387 of 2016 decided on 23.12.2016

Sachin. Then, he saw all the them assaulting Sachin. The postmortem report reveals that Sachin had received several injuries which are mostly stab, incise and chop injuries. Sachin died due to 36 injuries. It is true that the applicant/accused was acquitted from four cases, however, one case is pending against him. *Prima facie*, it appears that the applicant/accused is a threat to law and order. He was earlier involved in a case alongwith a syndicate and whether all other cases were different and independent and not alongwith syndicate, is immaterial if he has committed single offence and which is a subject matter of the case in hand then, *prima facie*, there is evidence that at that moment, he became a member of that said syndicate.

6. In the case of **Dinesh Bhondulal Baisware vs. The State of Maharashtra (supra)**, the applicant was carrying sword in his hand and he played an active role in assault and two chargesheets were filed against the applicant/accused in the past. But the learned Single Judge of this Court took a view that the chargesheets were filed only in individual capacity and not being a member of the crime syndicate. The applicant was also acquitted in those cases and therefore, there is no material available on

record to show implication of the accused under MCOC Act and, therefore, the learned Judge has held that the parameters for attracting section 21(4) are made out. The offence was under section 307 of the Indian Penal Code while the present case is under section 302 and therefore, the offence is more grave than the case of **Dinesh Bhondulal Baisware (supra)**. Moreover, bail is discretionary power of the Judge. The motive and the manner in which the deceased was killed and the evidence that applicant/accused was one of the assailants, I am of the view that this case is distinguishable.

7. In the case of **Anil Bhaiyaji Raut vs. State of Maharashtra (supra)**, there were six offences earlier against the accused, however, he was acquitted out of the said offences. After going through the said judgment, it is not clear besides MCOC, under which sections of Indian Penal Code the applicant was prosecuted. Hence, the said case is not applicable.

8. In the case of **Anil Bapu Mane vs. The State of Maharashtra (supra)**, the applicant/accused is the co-accused in the present case. However, the observations made by the learned Single Judge of this Court in para 3 of the said order is the answer

and itself distinguishes the case of Anil Mane and the present applicant/accused on the point of evidence. In the said case, Pramod Shelar and Vijay Kale, who have identified Anil Mane were not the eye witnesses and the eye witnesses are Manoj Kamble and Sandeep Chavan, who have not identified Anil Mane in the test identification parade. Therefore, this Court granted him bail.

9. In view of the above, irrespective of application of MCOC Act, considering the evidence, against the applicant/accused and the manner in which the applicant/accused was killed and the motive behind it, it is an offence of murder and therefore, I am not inclined to grant bail. Bail Application is rejected.

(MRIDULA BHATKAR, J.)