

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION No. 2200 OF 2015

Rizwan @ Tipu Sattar Pathan ... Applicant
Vs.
The State of Maharashtra ... Respondent

Mr. Aniket U. Nikam a/w. Mr. Aashish Satpute, Advocate for the Applicant.

Mr. Prashant Jadhav, APP for Respondent – State.

Mr. M.D. Pawar, Police Naik, Hadapsar Police Station.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **24th March, 2017.**

P.C.:

This Application is moved by the applicant/accused for bail, as he is facing prosecution for the offences punishable under sections 302, 143, 147, 148, 149, 201, 120B of the Indian Penal Code, under sections 4, 25 of the Arms Act and under section 3(1)(ii), 3(2) of the Maharashtra Control Organized Crime Act, 1999 in C.R. No. 448 of 2014 registered with Hadapsar Police Station on 11th August, 2014.

2. It is the case of the prosecution that the offence is registered at the instance of Veerbhadra Kalyani, a rickshaw driver that on 10th August, 2014 when he was sitting outside the house at around 10.30 p.m., he noticed that 7 persons who arrived there in the motorcycle

were talking beneath the tree and suddenly one of them started running on the road and other 6 persons followed him armed with sickles and after 15 minutes he noticed that other persons returned and went on their motorcycles. He could not note the numbers of their motorcycles, as they were covered with white chits. Thereafter on 11th August, 2014, police found dead body of Sanjay @ Sangram Walmik Kalbhor in the field of Shivaji Pawar. The body was identified by his brother Meghraj Walmik Kalbhor and pursuant to this information, the offence was registered.

3. It is the case of the prosecution that the applicant/accused is a leader of syndicate by name Tipu Pathan gang. He is a notorious criminal. He was having enmity against deceased Sanjay alias Sangram Kalbhor. Sangram Kalbhor was released on bail 2 to 3 months prior to the incident, therefore, the applicant/accused and co-accused Imtiyaz Pathan have conspired and decided to eliminate him. Pursuant to this, on the night of 10th August, 2014 Sangram Kalbhor was murdered. It is the case of the prosecution that as the murder was committed by the members of the gang of Tipu Pathan, this applicant/accused was arrested on 10th September, 2014. Thereafter the police applied for sanction under Maharashtra Control

Organized Crime Act and after obtaining sanction, the relevant sections of M.C.O.C. Act were applied in the present case against the applicant/accused and co-accused on 10th October, 2014. Hence, this Bail Application.

4. The learned counsel for the applicant/accused has submitted that the applicant/accused is innocent and he has not committed the offence. The learned counsel submitted that the applicant/accused was not present at the time of assault and there is no evidence against the applicant/accused. The applicant was called by the police at the police station and he was arrested on 10th September, 2014 only because he was having a bad criminal record. The learned counsel submitted that except the statements of two witnesses recorded on 9th September, 2014 and 10th September, 2014, there is no evidence against the applicant/accused. He submitted that as per the statement of one witness, he overheard the telephonic talk of co-accused Imtiyaz Pathan on 9th August, 2014 at 8 p.m. and the said Imtiyaz was telling to the other person on phone that Sanjay Kalbhor has planned to kill us and therefore, he himself planned that he along with other persons would kill Sangram Kalbhor. Imtiyaz also told to other person on phone to take care of our bail.

After the end of their conversation on phone, when the witness inquired with Imtiyaz, he disclosed that he was talking with Tipubhai and he threatened the witness of his life in the event of disclosure of this fact. The learned counsel has submitted that the motive attributed by the police in this statement is contrary to the letter written by the Investigating officer at the time of seeking permission to conduct Test Identification Parade. He submitted that in that letter, police have mentioned that deceased Sangram was indulged in teasing the sister of one of the accused Javed alias Rohit Salim Shaikh and had outraged and assaulted her, therefore, all the co-accused kill him. He further relied on the statement of other witness wherein it is stated that on the night of 10th August, 2014 at around 9 p.m. Imtiyaz along with three persons was in the hotel and they all were consuming liquor and he was telling other persons that the applicant/accused Tipu Pathan has told him to eliminate Sanjay Kalbhor. The witness was sitting next table of Imtiyaz Pathan and he overheard the conversation. The learned counsel has submitted that the applicant/accused was not present at the time of assault and was also not present when this alleged conversation had taken place in the hotel. He submitted that the applicant/accused undertakes that he shall not commit any offence, if he is released on bail. Thus, bar

under section 21 of Maharashtra Control Organized Crime Act will not come in the way of allowing this Application.

5. Learned APP strongly opposed this Application. He submitted that the applicant/accused is a gang leader of Tipu Phatan gang. The learned counsel relied on the affidavit of Investigating Officer A.P.I. Ravindra Manikroa dated 22nd March, 2016. The learned counsel submitted that the applicant/accused is a hardcore criminal and in the affidavit, the Investigating officer has given the chart of the cases which are pending against him. Learned APP has further submitted that in C.R. No. 166 of 2013 which is the case of extortion and in C.R. No. 483 of 2013 which is the case registered under section 307 of the Indian Penal Code against principal accused Imtiyaz, who is the co-accused of the present case. The learned APP has submitted that the applicant/accused is facing charges under M.C.O.C. Act and he, being the gang leader, the co-accused who are the members of his gang, have committed by this offence on behalf of the syndicate and hence the Application is to be rejected. He further relied on the statements of the witnesses and also the record of the call details of co-accused Imtiyaz Pathan. Learned APP pointed out that on 9th August, 2015 & 10th August, 2016 as

mentioned by the witnesses, there was a phone call between Imtiyaz Pathan and present applicant/accused. Learned APP submitted that co-accused, who were released on bail, are absconding and No Bailable Warrant are issued by the learned Sessions Judge. He submitted that the applicant/accused is likely to commit offence if at all he is bailed out. Therefore, the Bail Application is to be rejected.

6. Perused the FIR, statements of the witnesses and the postmortem notes. The deceased was brutally killed by the assailants. It is a planned murder. There are eye witnesses, however, name of the applicant/accused is not mentioned as an assailant and admittedly the applicant/accused was not present at the time of assault. I have carefully read the statements of the witnesses who have stated against the applicant/accused. Both the witnesses have overheard the conversation of Imtiyaz, principal accused, one on 9th August, 2014 and other on 10th August, 2014. However, the statements of both the witnesses were recorded one month after the incident, i.e., 10th September, 2014. There are one or two phone calls on the night of 9th August, 2014 and 10th August, 2014 between the applicant/accused and principal accused Imtiyaz.

7. Perused the letter given to Tahsildar on 6th September, 2014 for conducting Test Identification Parade. The applicant/accused was arrested subsequently on 10th September, 2014. Considered the portion of motive, as there are two theories of motive put up by the police. The applicant/accused is having bad record of crimes. He has committed two offences along with principal accused. However, in the present case, *prima facie* there is no enough evidence against him. I rely on the view taken by this Court in the earlier Bail Application Nos. 1696 of 2014 of Mangesh Manik Kanchan vs. State of Maharashtra and 1930 of 2014 of Navanath Vilas Chavan vs. State of Maharashtra dated 13th July, 2015 on the point of bar under section 21 of M.C.O.C. Act. Considering this, I allow this Application on the following terms and conditions:

ORDER

- i) The applicant/accused be enlarged on bail on furnishing P.R. Bond in a sum of Rs.50,000/- with one or two sureties in the like amount;
- ii) The applicant shall not commit any offence against the property and human body;
- iii) The applicant shall not threaten the witnesses and tamper the evidence;

- iv) The applicant shall not enter the Pune City and Hadapsar till the first witness is put in the box except attending Court dates and except 1st and 15th day of each month, as he shall report Hadapsar Police Station between 11 a.m. to 12 noon;
- v) The applicant shall not jump the bail;
- vi) The applicant shall not abscond or leave India without prior permission of the Court and furnish his permanent address to the Investigating Officer alongwith documentary proof of his 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.

8. The Application for bail stands disposed of on above terms.

(MRIDULA BHATKAR, J.)