

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.516 OF 2018

IN

CRIMINAL APPEAL NO.364 OF 2018

SAGAR JAIRAM BHADANGE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

AND

CRIMINAL APPLICATION NO.517 OF 2018

IN

CRIMINAL APPEAL NO.365 OF 2018

GANESH SURESH WAGH@GANYA KAWLYA)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Aniket Nikam, Advocate for the Applicants.

Mr.A.R.Kapadnis, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 28th JUNE 2018

P.C. :

1 These are applications for suspension of sentence and releasing applicant/accused no.6 Sagar Bhadange and applicant/accused no.9 Ganesh Wagh on bail during pendency of the appeals filed by them, challenging their conviction and resultant sentence in Special MCOC Case No.1 of 2013 recorded by the learned Special Judge, Nashik, on 21st February 2018. Both these applicants/accused are convicted for offences punishable under Sections 109 and 120B of the Indian Penal Code, under Section 395 read with 392 of the Indian Penal Code as well as under Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act. On each count, they are sentenced to suffer rigorous imprisonment for 8 years, apart from imposition of fine as well as default sentence.

2 Heard Shri Aniket Nikam, the learned counsel appearing for both applicants/accused. He argued that so far as applicant/accused no.6 Sagar Bhadange is concerned, evidence against him comprises of recovery of the motorcycle and chopper

apart from confessional statement of accused no.1 Nagesh Sonawane. The learned counsel argued that evidence of the prosecution does not indicate that the recovered motorcycle and chopper was used in commission of crime. Recovery of chopper is also not proved. The confessional statement of the co-accused does not indicate that applicant/accused no.6 Sagar Bhadange is involved in the offence. The learned counsel further argued that applicant/accused no.9 Ganesh Wagh was inmate of the Central Jail, Nashik, at the time of commission of the alleged offence, and as such, he had no role to play in the crime in question.

3 The learned APP opposed the application by contending that there is recovery of chopper apart from averments in the confessional statement, so far as applicant/accused no.6 Sagar Bhadange is concerned. However, learned APP fairly accepted the fact that the motorcycle seized from applicant/accused no.6 Sagar Bhadange is not proved to have been used in commission of the crime. So far as applicant/accused no.9 Ganesh Wagh is concerned, according to

the learned APP, he is the leader of the organization crime syndicate and rest of the accused were in his contact, as seen from the documentary evidence adduced during the course of the trial.

4 I have carefully considered the rival submissions and also perused the material made available on record including deposition of prosecution witnesses. Confessional statement of accused no.1 Nagesh Sonawane. was recorded by PW30 Sahebrao Patil, Deputy Commissioner of Police. The same is at Exhibit 417. While confessing the crime, accused no.1 Nagesh Sonawane has stated to PW30 Sahebrao Patil, Deputy Commissioner of Police, that Lalya Bhadange telephonically informed his cousin Sagar Bhadange (applicant/accused no.6) and Tukaram Chothwe to dispose of vehicle and choppers used in commission of the crime. Except this, there is nothing against applicant/accused no.6 Sagar Bhadange in the confessional statement of accused no.1 Nagesh Sonawane. It is not shown to this court, as to how applicant/accused no.6 Sagar Bhadange was aware about commission of the organized crime by the organized crime

syndicate headed by applicant/accused no.9 Ganesh Wagh. It is not shown from the prosecution evidence that applicant/accused no.6 Sagar Bhadange was knowing about commission of crime and use of vehicle and choppers in commission of that crime. It is also not explained as to why Tukaram Chothwe is not arraigned as an accused, though as seen from the impugned judgment, a motorcycle came to be seized from said Tukaram Chothwe vide Seizure Panchnama Exhibit 25. Evidence of PW2 Mahesh Jadhav, panch witness shows that motorcycle was already parked outside the Police station when he visited the Police station. It is not pointed out as to how the said motor cycle, allegedly seized from applicant/accused no.6 Sagar Bhadange, was used in commission of the organized crime, and that too, with his knowledge. So far as recovery of chopper is concerned, panch witness PW6 Manoj has virtually disowned the prosecution case by stating that he was standing outside the house when police recovered the chopper. Nothing is pointed out, as to how and in which manner, the prosecution is connecting the said chopper, allegedly recovered from the house of applicant/accused no.6 Sagar Bhadange, with

commission of the crime in question, and that too, with knowledge of applicant/accused no.6 Sagar Bhadange. In this view of the matter, prima facie it is seen that, there are no reasonable grounds for believing that applicant/accused no.6 Sagar Bhadange is involved in commission of the organized crime. He was not even present on the spot of the incident, at the time of commission of the incident in question. No link evidence is pointed out to demonstrate his complicity in the organized crime.

5 So far as applicant/accused no.9 Ganesh Wagh is concerned, he was undergoing jail sentence at the time of commission of the subject crime. Confessional statement of accused no.1 Nagesh Sonawane recorded by PW30 Sahebrao Patil, Deputy Commissioner of Police, indicates that members of the organized crime syndicate, who are accused in this case, were seeking guidance from this accused by visiting the prison. Impugned judgment shows that there is documentary evidence to that effect. Hence, no case for releasing applicant/accused no.9 Ganesh Wagh on bail is made out. Therefore, the order :

ORDER

- i) Criminal Application No.517 of 2018 filed by applicant/accused no.9 Ganesh Wagh for suspension of sentence and releasing him on bail is rejected.
- ii) Criminal Application No.516 of 2018 filed by applicant/accused no.6 Sagar Bhadange is allowed. He is directed to be released on bail on his executing P.R.Bond in the sum of Rs.30,000/- and on furnishing 1/2 solvent surety/sureties in like amount.
- iii) As a condition of this order, applicant/accused no.6 Sagar Bhadange should not indulge in commission of any crime in future and failure to abide by this condition shall entail the prosecution to apply for cancellation of this order.
- iv) Applications are accordingly disposed of.

(A. M. BADAR, J.)