

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

CRIMINAL BAIL APPLICATION NO.1843 OF 2017

Sandeep @ Sanjay Rabaji Gadekar	.. Applicant
Vs.	
State of Maharashtra	.. Respondent

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Mr.Bharat J. Khanna a/w. Mr.Umesh Iyer, Advocate for the Applicant.
Mr.R. M. Pethe, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 16, 2018.

P.C. :

This is an application for bail in connection with C.R. No.I-301 of 2016, registered with Kalwa Police Station, District – Thane. The offences were registered under Sections 387, 452, 354, 504, 506(2) and 120-B of Indian Penal Code (“IPC”, for short) and Sections 3(1)(ii), 3(2) and 3(4) of Maharashtra Control of Organised Crime Act, 1999 Act, 1999 (“MCOC Act”, for short).

2 The case of the prosecution is that complainant Sameer Banda is knows the accused Ganesh Shinde @ Kalya Ganya Shinde and his associates, as they are resident of the same vicinity. They used to commit house trespass and demand money

and for not fulfilling the demand, the victims were being assaulted. On 7th September, 2017, there was a conspiracy between the accused. On 9th September, 2016 at about 11:10 p.m. Accused Ganesh Shinde @ Kalya Ganya and Ankush Gawand and another person entered into his house and caught hold of his neck and demanded Rs.10,000/-, by abusing him. Wife and sister of the complainant intervened. However, the accused had abused them in filthy language. They also outraged the modesty of one of the witness. Accused Ankush Gawand caught hold of waist of sister of the complainant and asked her to accompany him. Witness Smt.Parmeshwari was also pulled by the accused. Accused then threatened the complainant. Subsequently, FIR was registered with the police station.

3 Applicant was released on bail. However, on invocation of provisions of MCOC Act, bail of the applicant was cancelled on 31st December, 2016. It is the prosecution case that the applicant is a member of organized crime syndicate headed by accused Ganesh Shinde and several cases are registered against the applicant. It is further alleged that the co - accused Atul Mhatre has given his confessional statement under Section 18 of MCOC Act. On completing investigation, charge -sheet was filed.

4 Learned counsel for the applicant submitted that the applicant is in custody since 31st December, 2016. He is granted bail in connection with the subject FIR, however, bail was subsequently cancelled after the provisions of MCOC Act were invoked. It is submitted that the co-accused Ankush Gawand has been granted bail and the applicant is entitled for parity. It is further submitted that the alleged conspiracy was not acted upon. Applicant was not present at the scene of offence. He is being implicated on the basis of the statement of the co-accused. The prosecution relying on the statement of two witnesses viz. Aadesh Achrekar and Nikhil Mumbaikar, but, statement of the said witnesses were recorded after a period of about two months. It is further submitted that the witness no.5 Aadesh Achrekar is biased. It is submitted that there was no evidence to show the involvement of the applicant in the crime, and, merely on the basis of the antecedents of the applicant, the crime is registered. The applicant cannot be kept in custody. It is further submitted that the Special Court has granted bail to one Tillya @ Ajit Maruti Sudake, Devidas @ Deva Rabaji Gadekar.

5 Learned APP submitted that there is sufficient evidence against the applicant. There are 18 cases registered

against the applicant. Learned APP relied upon the affidavit filed by the investigating officer, which refers to the nature of evidence collected against the applicant and the number of cases registered against him. It is submitted that the applicant is a member of organize crime syndicate, and, hence, bail may not be granted to him. He submitted that the bail of the applicant was cancelled on account of applicability of the provisions of MCOC Act, and, considering the fact that the applicant is a history-sheeter, bail may not be granted to him. It is further submitted that the case of the co-accused who have been granted bail is distinct and the applicant cannot claim parity.

6 I have considered the submissions advanced by both the parties. FIR was registered in respect to the incident dated 7th September, 2016, wherein the complainant was assaulted and an attempt was made to extort money from him. The accused also allegedly outraged the modesty of the victims, who were present at the time of incident. However, it is not the case of the prosecution that the applicant was present at the scene of offence. It is pertinent to note that the alleged conspiracy was hatched when the accused was in custody and even on the date of the alleged incident, he continued to be in custody. The

prosecution case is that the applicant is one of the conspirators and considering that he is a member of organized crime, the provisions of MCOC were applied, and, bail granted to the applicant was cancelled. It is pertinent to note that several persons were granted bail by the Sessions Court. The co-accused Ankush Gawand was also allegedly the member of crime syndicate was enlarged on bail by the Sessions Court, Thane. While granting bail to the said accused, the learned Judge has taken into consideration the factual aspects of the matter and it was observed that the said accused was not present on the spot at the relevant time. The incident took place on 9th September, 2018, at 11:00 p.m., at that time the said accused was in custody. He was allegedly the member of the conspiracy. Thus, it is apparent that the case of the said accused and the applicant is based on similar footing. Even the applicant has admittedly not present at the scene of offence, and, he was in custody at the relevant time. It would be relevant to note that applicant was initially granted bail in connection with the FIR, however, after the provisions of MCOC Act were invoked, bail granted to the applicant has been granted. Learned APP has pointed out that there are cases pending against him. However, considering the nature of evidence which is available against the applicant in the

present case, there is no impediment in granting bail to the applicant. Taking into considerations the parameters under Section 21 (4) of the MCOC Act, in the light of the nature of evidence against the applicant, case for grant of bail is made out.

7 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.1843 of 2017, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R. No.I-301 of 2016, registered with Kalwa Police Station, District - Thane, on his furnishing P.R. Bond in the sum of Rs.30,000/-, with one or more sureties in the like amount;
- (iii) Applicant is directed to attend Kalwa Police Station, District-Thane, once in a month on first Saturday of the month between 10:00 a.m. to 12:00 noon, till the conclusion of the trial;

- (iv) Applicant shall not tamper with the evidence ;
- (v) Applicant shall attend the trial court proceedings on every date of hearing regularly, unless exempted by the Court for some reasons;
- (vi) Bail Application No.1843 of 2017, stands disposed of.

(PRAKASH D. NAIK, J.)