

3- BA 1862 of 2017 a/w. BA 1724 of 2017

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

BAIL APPLICATION No. 1862 OF 2017

Vijay Laxman Shinde

...Applicant

Vs.

The State of Maharashtra

...Respondent

WITH

BAIL APPLICATION No. 1724 OF 2017

Balu Kisan Gadade

...Applicant

Vs.

The State of Maharashtra

...Respondent

Mr. Umesh R. Mankapure for Applicants

Mr. S.R. Agarkar -APP

Mr. J.B. Jadhav, PN MIDC, Kupwad Police Station.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE: AUGUST 10, 2018

P.C.

1. Heard the learned counsel for the Applicants and the learned APP for State.

2. This is an application under section 439 of the Code of Criminal

Procedure, 1973.

3. The Applicants herein are charge-sheeted for the offences punishable under Section 385, 387, 323, 504, 506 r/w. 34 of the Indian Penal Code and under section 3(1) (ii), 3(2), 3(4) of MCOC Act registered with M.I.D.C. Kupwad Police Station, Dist. Sangli vide C.R. No. 9 of 2015. The first information report was lodged on 8.3.2015 by one Abulgani Amihamja Mujawar, alleging therein that he had purchased a plot in the year 2014 from one Ramesh Koli. The sister of Applicant – Vijay Shinde was residing in the adjoining plot. Vijay Shinde, after being enlarged on bail in other offences had approached the complainant and threatened him that he shall transfer the plot in his name and give funds for maintaining his organization. Upon denial by the first informant, he was assaulted by Sunil Dudhal, Vijay Shinde, and Balu Gadade i.e. Applicant in Criminal Application No. 1724 of 2017. That Balu Gadade was arrested on 9th March, 2015 for offences punishable under section 385, 387, 323, 504, 506 r/w. 34 of the Indian Penal Code. He was remanded to police custody till 11th March, 2015. While in judicial custody, he filed an application for seeking enlargement on bail and the bail was granted.

4. In the course of investigation, it was revealed that Sunil Dudhale is the leader of the organization. That Applicant – Vijay Shinde in Criminal

Application No. 1862 of 2017 is a member of the gang of Sunil Dudhale. There are as many as 15 serious offences registered against Sunil Dudhale at MIDC Police Station, Vishram Baug Police Station and Jat Police Station. That Vijay Shinde happens to be the member of the organization of Sunil Dudhale prior of 2009 and he was charge-sheeted in Crime No. 12 of 2007, 21 of 2010 along with Sunil Dudhale.

5. As far as Applicant – Balu Gadade is concerned, this is a first offence registered against him along with Sunil Dudhale. Hence, the investigating agency had filed an application seeking sanction to prosecute the Applicants under the provision of MCOCA. The sanction was granted on 30th March, 2015.

6. On 4th April, 2015, the accused were produced before the Judicial Magistrate, First Class for cancellation of bail as contemplated under the provisions of MCOCA. They were in police custody till 7th of April, 2015 and thereafter, they are in judicial custody.

7. Taking into consideration the fact that the Applicant Vijay Shinde is a member of the organization of Sunil Dudhale and in the present case also he had played an active role by assaulting the first informant with a deadly weapon. Hence, Vijay Shinde does not deserve to be enlarged on bail.

8. However, as far as the Applicant – Balu Gadade is concerned, the Learned APP also, upon instructions, fairly submits that this is the first offence, in which he has been charge-sheeted along with Sunil Dudhale. Moreover, the role attributed to him is that of assaulting with fist and kick blows and accompanied Sunil Dudhale and Vijay Shinde.

9. In view of this, the Applicant Balu Gadade in Criminal Application No. 1724 of 2017 would be entitled to enlarge on bail.

10. Taking into consideration the fact that he does not have criminal antecedent and is not charge-sheeted with the leader of the gang, it can be said that there is possibility that upon being enlarged on bail, he would not indulge in similar offence, if imposed certain conditions. Hence, the satisfaction under section 21(4) of MCOCA.

11. The observations are prima facie in nature and shall not be considered for the purpose of discharge application or at the time of trial.

12. Hence, the following order.

ORDER

(i) Bail Application No. 1724 of 2017 is allowed.

(ii) The Applicant in Bail Application No. 1724 of 2017 be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- and one or more

solvent sureties in the like amount.

- (iii) The Applicant shall not reside in the jurisdiction of Sangli, Miraj, Kupwad Municipal Corporation till conclusion of the trial.
- (iv) Within three weeks from the date of being enlarged on bail, the Applicant shall give an undertaking to the police as well as to the Special Court that he would attend each and every scheduled date at the time of trial. Upon failure to attend any two consecutive dates, the prosecution would be at liberty to file an application under section 439(2) of Cr.P.C.

Bail Application No. 1862 of 2018 stands rejected.

Both the bail applications are disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]

Vaishali
Anil Tikam

Digitally signed by
Vaishali Anil Tikam
Date: 2018.08.14
22:52:16 +0530