

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1692 OF 2018

Prashant Dilip Sapkal, Age 29 years,
R/o.At and Post Kuchi,
Taluka Kavathemahakal, Dist. Sangli
(Presently lodged in judicial custody at
Thane Central Prison).

Applicant

versus

The State of Maharashtra

Respondent

Ms.Akshta Desai I/by Nitin Sejpai for applicant.

Mr.A.R.Kapadnis, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 5th October 2018

PC :

1. This is an application for bail in connection with CR No.I-229 of 2015 registered with Ulhas Nagar Police Station for offences under Sections 302, 386, 201, 120-B of Indian Penal Code read with Sections 3, 25, 7, 27 of Arms Act read with Sections 37(1) and 135 of Mumbai Police Act read with Sections 3(1)(i), 3(2) and 3(4) of Maharashtra Organized Crime Syndicate Act, 1999 ('MCOC Act').

2. The case of prosecution is that the complainant Ashok had lodged the complaint on 11th September 2015 against two unknown persons. It is alleged that when the complainant had come to his office at about 11.30 am, his brother Sachanand @ Sachu was in the office. He has stated that at about 3.30 p.m. he has gone out for some work and that he received a call from his office disclosing that

two unknown persons had come to his office on motorcycle and had fired at Sachanand @ Sachu. The injured was taken to Central Hospital and thereafter to Fortis Hospital, Kalyan where he succumbed to injury. The FIR was lodged. During the course of investigation it was revealed that the accused Nitin Avghade was involved along with two other persons in the crime. Thereafter several other accused including the applicant came to be arrested. On completing the investigation the charge sheet has been filed.

3. Learned counsel for applicant submitted that prosecution has not made out any case to show his involvement in the crime. Considering the nature of evidence, the embargo under Section 21(4) of MCOC Act cannot deprive him to grant of bail. It is further submitted that there is no evidence that the applicant was one of the accused and that he was present at the spot. It is submitted that the offences under MCOC Act are not made out against the applicant. There is no material to show that the applicant had aided and abetted the co-accused in the commission of crime. There is no evidence to show that the applicant is a member of organized crime syndicate led by the prime accused. It is submitted that the co-accused Pravin Patil has been granted bail by this Court in Bail Application No.2357 of 2016 by order dated 5th April 2018. The applicant is, therefore, entitled for parity. It is further submitted that in the absence of any cogent evidence about involvement in the present crime, he cannot be denied bail on the ground of antecedents against him.

4. Learned APP submitted that the applicant is involved in the crime. The applicant is the member of crime syndicate. The accused

had demanded ransom and for not complying with the same, the victim was liquidated. The deceased was running cable business. The accused Vijay and others had demanded Rs.10 lakhs at the instance of gangster and for not fulfilling the demand, the victim was shot dead by using fire arm. It is further submitted that there are three crimes registered against applicant under Sections 386, 120-B of Indian Penal Code. The amount of Rs.30,000/- was credited in the account of applicant from the account of co-accused Gautam Mehta. He has withdrawn the said amount and used the said fund to help other accused. It is also submitted that involvement of applicant is implicit on account of CDR record. Hence, application be rejected.

5. Having gone through the documents it can be seen that it is not the prosecution case that the applicant was amongst three persons who fired at the deceased in his office or that the applicant was present at the spot. According to the prosecution, Rs.30,000/- was deposited by one of the accused in the account of applicant. The advocate for applicant has placed reliance on order passed by this Court granting bail to the co-accused. On perusal of the said order it is apparent that the said accused was granted bail considering the fact that he was not present at the scene of offence and had not participated in the crime. It was also the case of prosecution against the said accused that Rs.5,000/- was deposited in his account and Rs.25,000/- was deposited in the account of his mother. It was also argued that CDR record indicates his involvement which show that he was in touch with the co-accused Vijay Phadke and there are antecedents against him. The Court had observed that there is no evidence to show that the said accused was in touch with the co-accused Vijay on the date of incident. Neither the tower location of

CDR record shows presence of said accused nor the spot. The Court also observed that only on the basis of antecedents, bail cannot be denied to the said accused. This applicant was also not present at the place of incident and not amongst the assailants. The case of the applicant stands on parity with co-accused who has been granted bail. Thus, prima facie, even in respect to the applicant, there are no grounds to conclude that the applicant is guilty of offence charged with.

6. Considering the aforesaid facts and circumstances, bail can be granted to the applicant. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.1692 of 2018 is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with CR No.I-229 of 2015 registered with Ulhas Nagar Police Station, on furnishing PR bond in the sum of Rs.50,000/- with one or more local solvent sureties in the like amount;
- (iii) The applicant shall attend Ulhas Nagar Police Station on first Sunday of every month, between 10 am and 12 noon till conclusion of trial;
- (iv) The applicant shall inform the latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time, to the Trial Court as well as to the Ulhas Nagar Police Station, in writing;
- (v) The applicant shall not tamper with the evidence or attempt to influence/contact the complainant, witnesses or any person concerned with the case;

- (vi) The applicant shall deposit his passport, if any, with the concerned investigating officer;
- (vii) The applicant shall co-operate in the conduct of trial and shall attend the Trial Court on every date of hearing, unless exempted for any reason by the Trial Court;
- (viii) The undertaking to the aforesaid clauses (iii) to (vii) shall be filed by the applicant, in the Trial Court, within two weeks of his release;
- (viii) If there are two consecutive defaults either in attending the police station or in appearing before the Trial Court, the prosecution will be at liberty to apply for cancellation of applicant's bail.

7. It is made clear that the observations made herein are prima facie and are confined to this application and the learned Judge shall decide the case on its own merits, uninfluenced by the observations made herein. Criminal Bail Application stands disposed off.

(PRAKASH D. NAIK, J.)

MST