

ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL BAIL APPLICATION NO. 119 OF 2019**

Aakash Dipak Lokhande

.....Applicant

V/s.

The State of Maharashtra

.....Respondent

Mr. Ashok P. Mundargi Senior Advocate i/b Mr. Priyal G. Sarda for
the applicant

Mr. S. S. Hulke APP for the State

CORAM : NITIN W. SAMBRE, J.**DATE : FEBRUARY 18, 2019.****P.C.**

Heard the learned senior counsel for the applicant and the
learned APP.

2 Applicant is seeking regular bail in Crime No. 332/2016
registered with Talegaon Dabhade Police Station, Pune for offence
punishable under Sections 302, 395, 120-B, 201, 143, 147, 148,
149 of the Indian Penal Code and sections, 3, 4/25, 27 of the Arms

Act.

3 Applicant came to be arrested on 17/10/2016 for an alleged incident on 16/10/2016 of murder of one Sachin Shelke by a gang headed by Sham Dabhade, the present applicant is alleged to be a member.

4 The prosecution case is, Sachin Shelke was at logger head with Sham Dabhade over certain commercial issues viz. business of supply of water and minor mineral in Pimpri-Chinchwad Industrial Area. Deceased Sachin some time back was President of Municipal Council. It is alleged that he had not budge to the pressure of illegal demands of gang leader Sham Dabhade. Accordingly gang leader Sham Dabhade hatched conspiracy, organized his group with appropriate responsibility to each of the co-accused and murdered Sachin.

5 In the incident, the attributions/allegations against the applicant are, that of applicant providing his vehicle for

transportation of the accused persons, after execution of offence of murder. Co-accused ran away from the scene of offence, crossed railway line and boarded the vehicle of the applicant which is claimed to be seized from his custody.

6 After the applicant was charge-sheeted, the Special Court rejected the application having noticed that applicant is *prima facie* involved in the offence.

7 While trying to make out a case for grant of bail, the submissions of Mr. Mundargi, the learned senior counsel are, of the total 22 accused, two have died, one is absconding whereas Gurudev Marathe is ordered to be released on bail. According to him, there are no eye witnesses to the incident who have identified the involvement of the applicant in the crime in question. He submits that pursuant to the statement recorded under section 18 of the Maharashtra Control of Organised Crime Act, 1999, co-accused Datta Waghole and Amit Dabhade have narrated the execution of the offence. According to him, Amit Dabhade, main accused in the

offence has not referred to the applicant in his confessional statement, having been aided the gang in execution of the offence. He would then urge that Datta Waghole in his confessional statement has stated that gang leader Sham has instructed all the accused persons to flee away from the scene of offence after the execution towards railway line where the applicant was to wait with his vehicle. Shri. Mundargi would urge that the aforesaid confessional statement cannot be inferred or stretched to the extent of inferring the direct involvement of the applicant in the crime in question. According to him, even if what has been stated in the confessional statement for the sake of argument is accepted, there is no corresponding corroborative evidence viz. call details between the applicant and that of brother of co-accused or the other accused persons. According to him, prosecution story is two fold (a) that accused executed the offence in an Indigo car and ran away from the spot and then boarded the car of the applicant; (b) The Indigo car was found to be having blood stains. He submits that the applicant as such is entitled for bail having regard to the fact that there is no material to *prima facie* implicate or connect the applicant to the

crime in question.

8 The learned APP while opposing the claim has relied upon the confessional statement of both accused namely Datta and Amit so as to substantiate his contentions of satisfaction of the ingredients as contemplated under section 3 & 4 of MCOCA. According to him, the role attributed to the applicant was that of assisting the accused person to make them reach at safer place which he has executed as per instructions of main accused Sham. He would then invite attention of this Court to seizure of vehicle of the applicant and further urge that the seizure is sufficient to draw presumption under section 22 of the Act. According to him, there is sufficient material to implicate the applicant in the crime in question.

9 Upon appreciation of submissions, perusal of the charge-sheet placed on record what is noticed is apart from one crime which the applicant has executed after his detention under MCOCA within the jail, but for the present crime, there are no other antecedents. As such, it is required to be appreciated from the record whether there

is sufficient material to infer that the applicant acted as member of organized crime syndicate for the purpose of execution of the offence under MCOCA. So far as the confessional statements of accused Datta and Amit are concerned, Amit has admittedly not attributed any role to the applicant whereas co-accused Datta in his confessional statement claimed that it is Amit who informed other accused that present applicant will provide them transportation from the other side of the railway line after the commission of the offence. If the said statement is appreciated, what is noticed is other co-accused are not coming forward with a categorical statement that applicant was present when initial conspiracy was hatched, he was introduced to other accused persons, as a carrier after the execution of the crime. Rather it is the case on the record that main accused Sham alleged to have been travelled in the car of the applicant.

10 Apart from above, it is not the case of the prosecution that the applicant remained in contact with other co-accused who are the members of the crime syndicate. No CDR to that effect are produced or investigated into.

11 Though it is claimed that applicant has used his vehicle for the purpose of transportation, the main vehicle i.e. Indigo car was found to be having blood stains. Whether there were blood stains or any other incriminating material could be traced in the vehicle of the applicant in which co-accused allege to have travelled is not investigated into. As such, merely for the words, there is no material to infer that accused persons have travelled in the vehicle of the applicant.

12 In the wake of above, there is hardly any material to infer *prima facie* involvement of the applicant in an offence punishable under MCOCA. That being so, in my opinion, case for bail is made out.

(A) Applicant be released on bail in Crime No. 332/2016 registered with Talegaon Dabhade Police Station, Pune on executing P.R. bond in the sum of Rs. 1,00,000/- with two sureties in the like amount.

(B) Applicant shall not influence witnesses or tamper with evidence.

(C) Till conclusion of trial, applicant shall not enter jurisdiction of revenue district of Pune but for attending the trial.

(D) If applicant is found in similar type of offence, prosecution will be at liberty to approach this Court for cancellation of bail.

13 Application stands disposed of.

[NITIN W. SAMBRE, J.]