

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

BAIL APPLICATION NO.417 OF 2018

Anil Dattatray Gaikwad	)	
Age 35 years, Occ. Agri./Business	)	
Residing at Village Wadki,	)	
Taluka Haveli, District Pune.	)	.. Applicant

Versus

State of Maharashtra	)	
(Through Loni-Kalbhori Police Station)	)	.. Respondent

Mr.Kuldeep S. Patil I/by Mr.Mandar Goswami for the applicant.
Mr.A.R. Kapadnis, APP for respondent-State.
Mr.Satyavrat Joshi I/by Mr.Nitesh Mohite for intervener.
Mr.V.D. Lagas, Police Naik, Loni-Kalbhori Police Station present.

CORAM : P.N. DESHMUKH, J.
RESERVED ON : 24th April 2019
PRONOUNCED ON : 2nd May 2019

Order Judgment :-

1. Accused no.2 involved in C.R. No.338 of 2015 registered with Loni-Kalbhori Police Station for offences punishable under Sections 302, 120B, 34 of IPC and Section 3(25) of Arms Act and Section 3(1)(i) (ii), 3(4) of MCOC Act, 1999 has filed this application for bail.

2. Applicant is in custody from the date of his arrest from 11th September 2015 and charge-sheet in this crime is filed before Special Court on 5th March 2016.

3. Learned counsel for applicant submitted that applicant is falsely involved by complainant after due deliberation with his family members as relations between them were strained on the issue of collecting fodder from the field, of which Crime No.55 of 2015 was registered against co-accused Sagar Gaikwad, Sudam Gaikwad, Ganesh Gaikwad, Ajikya Shivaji Gaikwad and others on the basis of report of deceased Hemant Gaikwad on 19th February 2015 with same Police Station and thus, inspite of applicant having not involved in this crime in any manner merely because he is distantly related to accused Uttam Gaikwad, Sagar Gaikwad, Dasrath Gaikwad, he is involved in the present crime. It is also contended that according to the case of prosecution, applicant is posed as one of conspirators for commission of murder of Hemant Gaikwad, however, inspite of such limited involvement of applicant, there is no material establishing his involvement even on this count as documents filed with charge-sheet do not disclose that applicant has got involved in this offence with object of gaining pecuniary benefits or gaining undue economic or other advantage for himself or other persons. It is also the case of applicant that case involving applicant as such, has nothing to do with organised crime. Applicant claiming himself to be agriculturist having roots in the society prays for his release on bail by imposing conditions, if any.

4. It appears to be the case of prosecution that on 9th September 2015, report is lodged alleging that on 19th February 2015, there was quarrel between applicant, other co-accused on one side and deceased on other side on trivial issue when on that day complainant, Ramdas Modak along with deceased and one Amol Gaikwad had been to the house of his brother Vishal Modak and lodged report at Loni-Kalbhor police station alleging therein that their relations with applicant's family members are strained since long. There were N.C. complaints lodged against each other at the police station. That on 9th September, 2015, in the afternoon at about 12.30 p.m. when he alongwith Amol Gaikwad and deceased Hemant Gaikwad were sitting and chitchatting at a tea stall of Bala Zhende and after some time proceeded towards the house of Vishal Modak where they reached there at about 3.15 p.m., and when he was climbing the staircase of his brother's house, he heard sound of firing of gunshot and, therefore, turned back and saw co-accused, Mangesh Modak and 3 other persons had opened fire on the deceased. He had given description of clothes on the person of said assailants. As per report, complainant carried his brother Hemant to Noble Hospital, where he was declared dead on admission. Hence, on the basis of the said report, Crime No.338 of 2015 is registered of which investigation is complete and charge-sheet is filed.

5. Learned counsel for applicant by referring to contents of report thus urged that there is no role attributed to applicant as assailant of deceased except for alleging that he along with other members of his family and co-accused persons having old enmity with deceased conspired to commit his murder by hiring co-accused Mangesh Modak and 3 others. It is submitted that in view of this, limited role attributed to applicant by complainant. There is nothing to establish that applicant was in any manner instrumental for causing death of deceased by firing gun shot. By referring to statements of Navnath Gaikwad and Sachin Phate, it is established that even from their statements, except for contents of report as aforesaid, nothing more is brought on record.

6. By referring to statement of Satosh Modak and his additional statement dated 24th April 2015, it is submitted that though according to statement of this witness, he claims to have heard some conversations between applicant and other co-accused persons of their conspiring to commit murder of Hemant Gaikwad on paying Rs.25 lakh to Mangesh Modak, Dada Zende as deceased had earlier lodged complaint against accused persons for which they were taken into custody and also for the reason that due to complaint made by deceased to revenue authorities about activities of accused persons involving into illegal mining since

they were found imposed with heavy penalty by Tahsildar, accused had conspired to do away deceased Hemant by referring to documents filed with the charge-sheet, it is submitted that said case as set out by prosecution is not at all established even prima facie.

7. In light of statement of Santosh Modak, learned counsel has then referred to memorandum statement of co-accused Sudam Gaikwad to urge that from the window from which Santosh Modak claims to have heard conversations of applicant with other co-accused persons, thereby conspiring to kill deceased is a room situated on vacant plot surrounded in hilly area which thus falsifies the case of prosecution of Santosh Modak going to such secluded room and hearing conversations as alleged by him from its window.

8. One of points set out by prosecution to establish motive on the part of applicant and other co-accused, learned counsel for applicant referred to documents filed with charge-sheet and by referring to order passed by Tahsildar, it is pointed out that at that no point of time, any fine or penalty was imposed on applicant Anil Gaikwad for indulging into illegal mining. It is therefore, submitted that applicant, thus, cannot be attributed to have any motive to participate in present crime with co-

accused, and has therefore, prayed that in view of limited evidence as discussed above available against applicant, he be released on bail by imposing conditions.

9. It is further submitted that though according to Say of prosecution, applicant is shown involved in 4 other crimes being Crime Nos.140 of 2005, 385 of 2014, 1151 of 2016 and 11 of 2011 all registered with Loni-Kalbhori Police Station, admittedly applicant is not accused in Crime Nos.140 of 2005 and 1151 of 2016. With regard to Crime No.385 of 2014, it is case of applicant that same do not attract any of the provisions of extortion of money or making pecuniary advantage in any manner as according to allegation in this crime, issue arose as complainant in that crime had voted to some political party and was, therefore, abused and accused in that crime having armed with weapon, pelted stones on the house of complainant and nothing more, while with regard to Crime No.11 of 2011, it is submitted that it is registered under the provisions of Essential Commodities Act, 1955 alleging illegal storage of diesel by applicant in his house for which it is the case of applicant that he and his family being into agricultural business, requires diesel for various purposes and for agricultural operations etc. Application is therefore, prayed to be allowed on this count also.

10. Prosecution has opposed this application by filing its affidavit-in-reply contending that prior to incident involving present application, Crime No.55 of 2015 was registered against co-accused Sagar Gaikwad, Sudam Gaikwad, Ganesh Gaikwad, Ajikya Shivaji Gaikwad and others on the basis of report of deceased Hemant Gaikwad on 19th February 2015 which fact according to prosecution prima facie show that there were strained relations between applicant and accused in this crime. Prosecution has opposed this application also on the count that on the basis of complaint made by deceased against applicant to Tahsildar alleging his alleged illegal activities of mining for which applicant was imposed with heavy penalty, applicant had motive to take revenge of deceased and thus got committed present offence. It is also case of prosecution that on the basis of complaint made by deceased to revenue authorities at Taluka Haveli, applicant was penalised which fact prima facie shows that applicant and other co-accused had such motive.

11. It is further case of prosecution that from the statement of wife of deceased, it has come on record that during his life time, deceased Hemant Gaikwad had expressed her, about the threat to his life at the hands of applicant and other co-accused, however, admittedly at no point of time, any complaint or report is lodged against applicant or against any

of the co-accused either by deceased or by his wife. Prosecution while opposing application has relied upon statement of Dyneshwar Modak to show that applicant along with co-accused Sagar Modak, Mangesh Modak and Dada Zende were meeting at his hotel where they planned to commit murder of deceased. Thus, it is case of prosecution that available evidence collected against applicant clearly establish his participation in this crime.

12. While opposing application, prosecution has also relied upon order of this Court in Bail Application No.905 of 2016 rejecting bail application of co-accused Uttam Gaikwad dated 14th October 2016 and order of the Hon'ble Supreme Court of India dated 27th April 2017 dismissing SLP preferred by said accused. Accordingly prosecution has prayed that application be rejected.

13. Learned counsel for intervener supported above submissions and relied on the case of ***State of Maharashtra Vs. Vishwanath Maranna Shetty reported in (2012) 10 SCC 561*** and of Division Bench of this Court in the case of ***Govind Sakharam Ubhe Vs. State of Maharashtra*** in Criminal Appeal No.18 of 2009 dated 11th June 2009 and submitted that in view of above legal pronouncements, application be rejected.

14. Learned counsel for applicant by referring to facts in the case of Vishwanath Maranna Shetty referred (supra) submitted that it is having distinguishing facts as accused in that case was found to be active member of organised crime syndicate by managing funds of syndicate. Similarly, while referring to judgment in the case of Govind Sakharam Ubhe Vs. The State of Maharashtra (supra), leaned counsel has pointed out that observations in this judgment are in an appeal preferred against rejection of application for discharge. It is also submitted that order rejecting bail application of co-accused Uttam Gaikwad relied upon by prosecution since is also having distinguishing facts against the case of applicant that by itself can be no ground to reject present application.

15. In the background of submissions advanced by learned counsels for both the sides and considering case of prosecution, application in hand is required to be dealt with by keeping in mind relevant provisions of the special statute, especially having regard to provisions as contemplated in Sub-section (4) of Section 21 of MCOC Act, 1999 to consider material collected against accused, during the course of investigation, if it justifies a judgment of conviction, and also to bear in mind possibility of applicants committing crime if released

on bail and from available evidence on record to consider applicant's involvement in commission of an organised crime either directly or indirectly and apart from giving an opportunity to prosecution to oppose the application also to consider that there is reasonable ground for believing that accused is not guilty of alleged offence and he is not likely to commit any offence while on bail.

16. Having considered requirements as aforesaid on scrutinizing evidence against applicant, FIR would reveal two incidents, out of which, one is of 19th February 2015 when on the issue of carrying fodder in field quarrel took place between deceased on one side and applicant and co-accused Uttam Gaikwad, Dasrath Gaikwad, Sagar Gaikwad and others on other side, of which counter reports were lodged by both the sides. Another issue put forth in report by Ramdas Modak who is friend of deceased is of alleged illegal mining by applicant and his family members of which report is lodged by deceased to concerned Tahsildar for which they were heavily fined and for this reason, it is stated that applicant and co-accused had grudge against deceased. Third incident referred is of 9th September 2015, out of which, present application arise wherein it is alleged that on that day, at around 12.30 p.m., complainant along with deceased and 2-3 others friends were having tea

in a hotel and were sitting there for 2-3 hrs. Thereafter, complainant along with deceased proceeded in a car of deceased towards house of Vishal Modak. At that time, it was about 3.15 p.m., complainant alighted from car and was proceeding to house of his brother. While deceased proceeded to photshop of Somya Tatya, when complainant was on the staircase of house of his brother, he heard noise of two gunshots and found co-accused Mangesh Modak and 3 others, out of which, 2 persons were on their respective two wheelers while co-accused Mangesh Modak and one unknown person were armed with one pistol. Complainant also noticed that when deceased was about to enter photshop of Somya Tatya, he fell down on staircase having sustained fire arm injury. Report further reveals that assailant thereafter shouted that “याचे काम तमाम झाले. चला अनिल काकाला सांगू.”

17. In the fag end of report, it is alleged that as relations between applicant, his co-accused brothers and deceased were strained due to old enmity, he was done to death by hiring contract killers Mangesh Modak and 3 unknown persons. Perusal of report as aforesaid thus would reveal involvement of applicant as aforesaid due to strain relationship between applicant, his family members and deceased and documents filed with charge-sheet are therefore, minutely scrutinized to

satisfy if reason as put forth in complaint satisfactorily establishes applicant's involvement in this crime, particularly for the reasons mentioned therein above. For that purpose, perusal of statements of Navnath Gaikwad and Sachin Phate would reveal that same are similar to contents of report of strained relations and about these two witnesses, learning of applicant's involvement in present crime since he and co-accused had strained relations with deceased.

18. Though prosecution to establish applicant's involvement had heavily relied upon statement of Santosh Modak, perusal of said statement would reveal that prior to incident which has occurred on 9th September 2015, in the first week of August, when he had visited his land where he had developed plots, applicant's plot is in existence having constructed thereon two rooms and when he had visited his site, he claims to have heard conversations from applicant's room involving applicant, co-accused persons Dasrath Gaikwad, Uttam Gaikwad, Sudam Gaikwad, Ganesh Gaikwad, Mangesh Modak and Dada Zende conspiring to commit murder of Hemant Gaikwad and had offered Rs.25 lakh to co-accused Mangesh Modak and Dada Zende who demanded Rs.10 lakh in advance. In his statement, Santosh Modak had alleged that at the same time, co-accused Sudam Gaikwad informed the alleged contract

killers that because of Hemant Gaikwad, they are involved in false case and revenue authorities have also imposed heavy penalty upon them for the alleged illegal mining. Thus, it is case of prosecution that applicant as aforesaid was instrumental and had hatched conspiracy with co-accused for causing death of deceased.

19. Before relying upon statement of Santosh Modak, it is material to note that above conversation is alleged to be heard by him in the first week of August 2015 and one month thereafter, incident took place, however, admittedly he had not made any police complaint nor deceased or his wife who claims to have knowledge of such conversation from Santosh Modak found it necessary to lodge any complaint to police which conduct of these witnesses needs to be considered, particularly in view of case of prosecution of long standing enmity and strained relations between deceased on one side and applicant, his relations and co-accused on other side. In that view of matter, this aspect by itself is not sufficient to be accepted against the applicant.

20. Perusal of memorandum statement of co-accused Sudam Gaikwad of his pointing out room where conspiracy is alleged to be hatched would reveal that same is recorded on 16th September 2015 and

placement of the room stated therein is on open plot having vacant plots surrounded to it with hilly area on one side and road proceeding to Zende Vasti to its north side. Having surrounded with open plot on two sides of said room even raises sufficient doubts in the case of prosecution, of Santosh Modak going near to the window of said room and of his hearing conversation as alleged in the statement.

21. Another point canvassed by prosecution is in respect of complaint lodged by deceased with Tahsildar, Taluka Haveli due to which applicant was required to pay heavy penalty for indulging into illegal mining. While considering said case of prosecution, documents on record in fact would reveal that during the course of investigation, communication was made by police to Tahsildar, Taluka Haveli, District Pune for obtaining documents with reference to illegal mining operation carried out by accused involved in this crime along with documents imposing penalty upon them, letter addressed to Tahsildar refers to names of co-accused Uttam Gaikwad, Dasrath Gaikwad, Sudam Gaikwad and Ganesh Gaikwad and amount of penalty imposed upon them. No name of applicant is referred in this letter, similarly letter from Tahsildar, Taluka Haveli, in response to above communication from police also do not refer to applicant in any manner as according to this

communication by Tahsildar, there is reference of closure of case filed against father of applicant on his payment of penalty. In fact, said communication also reveals of issuance of notice to co-accused Baban Gaikwad, Sudam Gaikwad and Ganesh Gaikwad, directing them to pay penalty charges as stated therein within one week. In that view of matter, since applicant is not involved in illegal mining, there is no reason for imposing any penalty to him and thus applicant cannot have any grudge against deceased to commit his murder for lodging complaint with Tahsildar, Taluka Haveli.

22. In the background of above discussed facts of the case of prosecution and reasons as aforesaid when the law relied in the case of State of Maharashtra Vs. Vishwanath Maranna Shetty (supra) is considered, same cannot be applied in the facts involved in present application as in that case, involvement of accused was established in an organised crime syndicate headed by wanted accused who were operating overseas which syndicate had indulged in various continuous unlawful activities like extortion and contract killings in Mumbai and other places through their members and accused in that case was found to be active member of organised crime syndicate as he had arranged for funds and also paid part of amount to the shooter and having considering

available evidence against accused therein, question which arose in appeal preferred against grant of bail by High Court was if order granting bail was justified particularly in view of restriction imposed under Sub-section (4) of Section 21 of MCOC Act, 1999 and considering involvement of applicant as aforesaid, order came to be set aside.

23. Similarly, law relied in the case of Govind Sakharan Ubhe Vs. The State of Maharashtra (supra) of Division Bench of this Court can also not be strictly applied to the application in hand as observations therein are pertaining to rejection of discharge of appellant by special Court and on considering various laws on that aspect, Court held same to be not a fit case for discharge.

24. Considering order of this Court rejecting bail application of co-accused Uttam Gaikwad, it is to be noted that on taking into consideration facts involved in the present case and criminal antecedents of said co-accused Uttam Gaikwad, his application is rejected finding that as relations between complainant and said accused and their family members are strained, there is possibility of his committing similar offence if released on bail, however, application in hand, have distinguishing facts as there is no involvement of applicant found in the

present crime except for incidents which took place between applicant's family and complainant's family members long back in February 2015 and further incident as referred in FIR, out of which, present application arise which is of 9th September 2015 in which no role is attributed to applicant except for some stray reference to one name as "Anil Kaka" alleged to be uttered by co-accused Mangesh Modak prima facie do not find to be sufficient to reject the application as other evidence relied by prosecution regarding complaint by deceased Hemant Gaikwad of alleged illegal mining activities by father of applicant and co-accused when considered with the documents filed with charge-sheet do not establish applicant's involvement at any point of time nor applicant is found imposed with any fine or penalty like other co-accused and his father. Similarly, further involvement as relied by prosecution with regard to conversation, alleged to be heard by Santosh Modak is also duly considered and for the reasons mentioned hereinabove said material does not find to be sufficient to be acted upon against applicant.

25. So far as pendency of criminal cases as mentioned in affidavit-in-reply, it is already referred in above paragraphs that out of 4 crimes stated in the said chart, applicant is not involved in offences at Serial Nos.1 and 3 therein, and facts involved in offences at Serial Nos.2

and 4 are in respect of alleged threats to complainant for casting votes to the candidate of particular political party and another crime is involving contravention of Essential Commodities Act wherein applicant is said to have illegally stored diesel, which according to applicant is required to perform agricultural operations etc.

26. Similarly, applicant is not charge-sheeted in C.R. No.55 of 2015 registered by Loni-Kalbhor Police Station on the basis of report by deceased dated 19th February 2015, as on investigation, no evidence establishing his involvement is revealed. In that view of the matter and for the reasons above, case of applicant is distinguishable on material particulars from the case of co-accused Uttam Gaikwad.

27. Applicant is arrested on 11th September 2015 and since then is in custody. From the nature of criminal antecedents of applicant, it cannot be said that applicant is connected with organised crime syndicate nor evidence relied against applicant established that he was instrumental in keeping watch on the movements of deceased Hemant Gaikwad and admittedly was not present on spot when his murder is committed. Considering evidence against applicant, application is thus liable to be allowed by imposing suitable conditions, as per following order : -

ORDER

- (i) Applicant Anil Gaikwad in C.R. No.338 of 2015 registered by Loni-Kalbhor Police Station, Pune for offences punishable under Sections 302, 120B, 34 of IPC and Section 3(25) of Arms Act and Section 3(1)(i)(ii), 3(4) of MCOC Act, 1999 shall be released on bail on his executing P.R. Bond in the sum of Rs.1,00,000/- with one surety in the like amount;
- (ii) While on bail, applicant shall attend Loni-Kalbhor Police Station on the first and fifteenth day of each month between 10.00 a.m. to 1.00 p.m. initially for a period of 6 months and thereafter on the first day of each month pending trial;
- (iii) Observations made hereinabove are prima facie and are confined to this application only. Learned trial Judge thus to independently evaluate evidence at the time of trial;
- (iv) Applicant shall not enter into territorial jurisdiction of Loni-Kalbhor Police Station except for marking his presence as aforesaid and shall not tamper with evidence or to influence any witnesses or any person concerned with the case;
- (v) Application is disposed of as allowed in above terms.

P.N. DESHMUKH, J.

28. Learned counsel for intervener prays to keep order in abeyance for a period of six weeks, however, considering the nature of evidence against applicant as has been discussed in the order, prayer is rejected.

P.N. DESHMUKH, J.