

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.685 OF 2019

Vijay Arun Nadhe

Applicant

versus

The State of Maharashtra

Respondent

Mr.Sudeep Pasbola with Mr.Karl Rustomkhan i/by Rahul Arote for applicant.

Smt.A.A.Takalkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 8th November 2019

PC :

1. This is an application for bail in CR No.531 of 2017 registered by Pimpri Police Station for offences u/s.307,143,147,148, 149, 120B, 212,506,201 of Indian Penal Code and Sections 3,4 and 25 of Arms Act, and Sections 3(1)(ii), 3(2), 3(3) and 3(4) of MCOC Act.

2. The applicant was arrested on 1-10-2017. The FIR was registered on 15-9-2017. The complainant has alleged that on 21-11-2010 his brother Santosh and others had committed murder of one Rakesh Ghule and the offence in that regard was registered against them. Subsequently he was granted bail. One Sachin Nadhe was the close relative of deceased Rakesh Ghule and Shashikant Ghule. It is further stated that the brother of complainant had also contested election of Municipal Corporation in 2017 as an independent candidate. Sachin Nadhe had also contested the election. The brother of complainant was threatened not to contest the said election. However, he contested the said election. It is

further stated that on 15-9-2017 Santosh and his friend Vijay Yadav and Nadim Maniyar had visited a tea centre at Pimpri. The informant received call from Vijay Yadav that there is incident of firing on Santosh and he has been admitted in the hospital. The informant visited the hospital and noticed that his brother had sustained injuries and was undergoing treatment. He made inquiries about the incident and he came to know that while he was taking tea at Om Shiv Tea Centre, Sachin Nadhe, Vicki Sutar, Vijay Nadhe (applicant) and Avinash Nadhe came there. They were armed with pistol. They were also accompanied by 4 to 5 other persons. They had covered their faces with handkerchiefs. They were armed with sickles. Suddenly Sachin, Vicky, Vijay and Avinash fired at him as a result of which Santosh sustained injuries. Hence an offence was registered u/s 302 of IPC. The investigation proceeded. Statements of witnesses were recorded. On completion of investigation charge sheet was filed. Sanction was obtained for application of provisions of MCOC Act, which was granted. The case is pending before the Special Court under MCOC Act.

3. The statement of injured was recorded during the course of investigation on 31-10-2017. In the said statement he has stated that on 15-9-2017 the accused had fired at him. He has attributed role of firing by pistol to Sachin, Vicky, Avinash, Pratik and Vijay. He also stated that other accused were having sickle in their hand at the time of incident. The statement of another witness who was accompanying the injured, namely Vijay Yadav, was recorded on 15-9-2017. The said witness stated that the applicant and others were armed with pistol and other persons who had covered their faces, were armed with sickles. The applicant and others had fired by

pistol. Similarly the statement of another eye witness Nadim Maniyar also depicts same story which is apparent from his statement dated 15-9-2017.

4. The most vital aspect of the matter is the panchanama recorded during the course of investigation by the investigating machinery on 21-9-2017. The sequence of events occurred on 15-9-2017 which were purportedly captured in CCTV camera, are depicted in said panchanama. The co-accused was interrogated and he was asked to identify the persons who were seen in that CCTV footage and participated in the crime. The detailed sequences have been provided in the said panchanama. It is noted that at 3.30 pm which is undisputedly the time of incident, some of the persons had entered into Om Shiv Tea Centre and fired at the injured person. It is pertinent to note that panchanama do not refer to the presence of applicant. Specific overt act is being attributed to other persons. Even presence of applicant has not been reflected in the place where the incident took place. Thus the prosecution is trying to establish the identity of the assailants with the aid of panchanama recorded on 21-9-2017. Although identification of accused was through co-accused, the prosecution is relying on said documents to establish identity. The names of the persons who have fired at injured were specifically disclosed vide said panchanama, which was with regards to CCTV footage. The evidence of CCTV would bear importance. The said document falsifies the version of witnesses, as the CCTV footage recovered during the course of investigation did not refer to the presence or participation of applicant in the crime.

5. Learned APP submitted that the statements of the eye

witnesses including the injured person attributes overt act to the applicant as the person who had used pistol and fired at the injured person. It is further submitted that the provisions of MCOC Act are applied in the present case. It is submitted that confessional statement of the accused were also recorded u/s 18 of MCOC Act, which also showed the involvement of applicant in the crime. It is further submitted that version of witnesses is also corroborated by their statements recorded u/s 164 of Cr.PC.. The prosecution has filed an affidavit-in-reply opposing grant of bail. It is contended that one case is pending against applicant registered with Wakad Police Station for offence u/s 436 of IPC. It is submitted that there are several antecedents against the main accused, who is the gang leader. The said accused were also involved in the case which is registered against the applicant.

6. The injured person was discharged from the hospital on 13-11-2017. It is relevant to note that involvement of the applicant in the present case is doubted by CCTV footage which is relied upon as evidence. The CCTV footage in terms shows that there were five assailants who have been identified and the applicant is not one of the assailant. Under a panchanama dated 19-9-2017, the police had seized the CCTV footage from the CCTV camera which was installed outside the house of one Pravin Basant Totlani residing in Plot No.127, Monica Bungalow, near Sadhu Vaswani Garden, Pimpri. The said CCTV footage which was recorded in the DVR was downloaded on a pen drive and took charge of by the police. The said CCTV footage was played on a laptop by the police in presence of the panchas on 21-9-2017. The said CCTV footage of 15-9-2017 from 3.24.00 pm to 3.34.50 pm shows that two persons came on a

motorcycle near Satnam Hotel which is situated near Om Shiv Tea Stall. The said two persons are allegedly identified as Rahul Vishwakarma and Vicky Sutar. Rahul parked the motorcycle. Immediately thereafter three persons arrived traveling in a triple sear in an another motorcycle and they are identified as Baburao Somling Patil, Shubam Anand Yadav and Pratik Suresh Waghere. The CCTV footage further reveals that Shubam was tying handkerchief on his face. Baburao and Rahul went inside the hotel. Shubam who had tied handkerchief on his face was seen taking out some weapon and thereupon the people started running away. Pratik was seen firing from his pistol inside the hotel and he ran in front of the house of Pravin Totlani. Something was thrown out of the hotel, and Vicky, Rahul and Shubham were seen running away. It is also pertinent to note that in the confessional statement of the accused, although involvement of the applicant and other accused were reflected, the said statement mentions that the applicant was at the place of incident armed with sickle, which is contrary to version of eye witnesses. There is reasonable doubt about involvement of applicant in the crime. Taking into consideration the aforesaid circumstances and also even considering the embargo u/s 21(4) of MCOC Act and in view of observations of Supreme Court in the case of Ranjitsingh Sharma Vs. State of Maharashtra (2005-ALL MR (Cri)-1538), the applicant is entitled for bail. The applicant is in custody from 1-10-2017. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.685 of 2019 is allowed and disposed of;

- (ii) The applicant is directed to be released on bail in MCOC Special Case No.15 of 2018 arising out of CR No.531 of 2017 registered with Pimpri Police Station, Pune, on is furnishing PR bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- (iii) The applicant shall stay out of the jurisdiction of Pimpri Police Station till conclusion of trial;
- (iv) The applicant shall furnish details of his residence to Investigating Officer and shall report the nearest Police Station where he would reside after being released on bail, once in a month on every first Saturday between 10 am and 12 noon till further orders;
- (v) The applicant shall attend Trial Court proceedings regularly unless exempted for some reason, and shall not tamper with evidence.

(PRAKASH D. NAIK, J.)

MST