

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Bail Application NO. 1449 OF 2019

Surendra Shamker Pal

...Applicant

Versus

The State Of Maharashtra

...Respondent

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- Mr. Nitin Sejpai, Advocate for the Applicant.
 - Ms. Sharmila S. Kaushik, APP, for the Respondent-State.
 - Mr. Mahesh D. Pawar, HC 2767, Crime Branch, Pune City is present in Court.
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CORAM : SARANG V. KOTWAL, J.

DATE : 17th SEPTEMBER, 2019

P.C.

1. The applicant is seeking his release on bail in connection with C.R. No.I-10/2018 registered with Deccan Police Station.
2. The applicant is arrested on 23.1.2018 and since then he is in custody. The investigation is over and the charge-sheet is filed. The applicant and other accused are facing charges of commission of offences punishable under Sections 302, 307, 120-B, 201 of I.P.C., Section 3 read with 25 and 27 of the Indian Arms Act, Section 37(1)(3) read with 135 of the Maharashtra Police Act and Sections 3(1)(i), 3(2), 3(3), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as 'MCOCA').
3. The prosecution story, as unfolded in the Sanction dated

18.7.2018 granted under Section 23(2) of MCOCA, is as follows.

. Since 2012, the deceased Deven Shah was having dispute in respect of transactions of different lands with accused Nitin Dangat and Samir Sadavarte. In 2015, the deceased Deven Shah tried to settle this dispute through Rajesh alias Pandit Agarwal, Ravindra Chorge and their associates. Rajesh alias Pandit Agarwal had received Rs.75 Lakhs as a part payment of his commission from the deceased Deven Shah. The deceased Deven Shah had avoided to pay the remaining part payment of Rs.30 Lakhs to Rajesh Agarwal and his associates as per his commitment. Taking advantage of this situation, the accused Nitin Dangat and Samir Sadavarte with a view to obtain pecuniary gain hatched a conspiracy to commit murder of Deven Shah with the help of gang leader Sonu Rathore along with his gang members. Sonu Rathor made available and provided country made pistol to Rahul Shivtare. Nitin Dangat transferred an amount of Rs.2 Lakhs in the account of the accused Rajesh alias Pandit Agarwal. Rajesh Agarwal, in turn, provided country-made pistol and rounds to Ravindra Chorge. Rahul Shivtare and Ravindra Chorge in furtherance of the conspiracy committed Deven Shah's murder by using the country-made pistol provided by Sonu Rathor and Rajesh Agarwal. After this offence was committed, Sonu Rathor kept Ravindra Chorge and Rahul Shivtare at a lodge in Ujjain for two days. After arrest of Ravindra Chorge, accused Abhimanyu Tiwari

provided shelter to Rahul Shivtare at his residence at Thane. It is alleged that, at this time, the applicant had also accompanied Rahul Shivtare. The weapon and ammunition used to commit the murder were seized from the accused Ravindra Chorge under memorandum panchnama from the office of the present applicant. This is the case in brief against the other accused and it shows the role of the present applicant.

4. I have heard Shri Sejpal, the learned Counsel for the applicant and Smt. Kaushik, the learned A.P.P. for the State. Shri Sejpal submitted that there is nothing to show that the applicant was aware of any part of the conspiracy of commission of murder of the deceased. He came in the picture only after commission of the murder when the accused Rahul Shivtare had kept the weapons in his office. He submitted that, at the highest, the section which can be attracted against him is 201 of I.P.C., which is a bailable offence. He submitted that there is nothing to show that the provisions of MCOCA are attracted against the present applicant.

5. Learned A.P.P. opposed this application and submitted that the evidence shows that the applicant was aware of the conspiracy. The conduct of the applicant shows that he had not disclosed about his knowledge in respect of conspiracy to the Police Officers. This shows his involvement in the offence.

6. I have considered all these submissions. The only piece of

evidence against the present applicant is recovery of weapons and ammunition from his office. In that context, the memorandum panchnama in that behalf has its importance. Said panchnama was conducted on 22.1.2018. The co-accused Ravindra had made a statement leading to such recovery. The memorandum of his statement was recorded in the presence of panchas at about 4:00 p.m. on 22.1.2018. It was mentioned that this accused had shown willingness to point out the places where he had concealed his clothes, motor-cycle and two pistols. Pursuant to this statement, he had led the Police Officers and the panchas to various places. His clothes were not found where he had concealed them. Thereafter he led the police party to a room near Krushna Arcade. From that room, two pistols, one magazine and seven rounds were recovered from under a table. They were wrapped in a piece of cloth. The room was allegedly used as office by the present applicant.

7. Apart from this memorandum panchnama, there is a confessional statement of the accused Rahul Shivtare which is recorded under Section 18 of MCOCA. This statement was recorded on 8.6.2018. In that confessional statement, this accused Rahul Shivtare has stated that, on 15.1.2018, after committing the murder, he came to Thane. The applicant was told about the incident and the weapons were kept below the table in his office.

8. In the entire charge-sheet these are the relevant documents as

far as the applicant is concerned. The charge-sheet also mentions that there is one case pending against him vide C.R.No.88/2016 under Sections 326, 504, 341, 506 of I.P.C. registered at Kapurbavadi Police Station. That case is still pending. He is neither involved with any other accused nor is he a co-accused with them in any of the cases mentioned against their names. Therefore, the only point of consideration in this case is the recovery of weapons from his office. The prosecution case itself shows that the offence of murder was committed by other accused. Only after commission of the offence, the main accused Rahul Shivtare had gone to the office of the applicant and had informed him about commission of the offence. Therefore, obviously the applicant had nothing to do with hatching of the conspiracy and executing it for commission of murder of the deceased. Though it is true that the applicant was told by Rahul Shivtare about commission of murder and the applicant himself had not informed said fact to the police authorities, the fact remains that he was not involved in the main offence of murder. As rightly pointed out by Shri Sejpal, the offence may fall and indeed will fall under Section 201 of I.P.C., which is a bailable offence. Obviously, it is difficult to observe that he has committed any offence under the MCOCA or that he can be said to be one of the co-conspirators in commission of the offence under Section 302 of I.P.C. In this view of the matter, there is no impediment under Section 21 of the MCOCA to grant bail to the present applicant. Considering all these above aspects, the

applicant is entitled to be released on bail during pendency of the trial.

Hence, the following order :

O R D E R

i. The applicant is directed to be released on bail in connection with C.R. No.I-10/2018 registered with Deccan Police Station, on his furnishing a P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two sureties in the like amount.

ii. The application is disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)