

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Bail Application NO. 3382 OF 2018

Mebin @ Mannu Ibrahim Omen

...Applicant

Versus

The State Of Maharashtra

...Respondent

....
Mr. Priyal G. Sarda, Advocate for the Applicant.
Smt. A.A. Takalkar, APP, for the Respondent-State.
....

CORAM : SARANG V. KOTWAL, J.

DATE : 18th SEPTEMBER, 2019

P.C.

1. The applicant is seeking his release on bail in connection with C.R. No.267/2015 registered with Paud Police Station, Pune. Initially, the offence was registered under Sections 302 & 120B of I.P.C. and Sections 3 read with 25 & 4 read with 27 of Indian Arms Act. Subsequently the provisions of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as 'MCOCA') were invoked and the Sections 3(1)(i)(ii) and 3(4) of MCOCA were applied. The applicant was arrested on 5.12.2016 and since then he is in custody.

2. The prosecution case pertains to murder of one Vijay Mirage. The FIR was lodged on 24.12.2015 by his elder brother Sachin Mirage. He has stated that on 23.12.2015 the deceased had left his house for going towards Kothrud in his Range Rover car. He was accompanied by their cousin Ankush Mirage and driver Vipul Gujarathi. In the afternoon, the informant and the deceased had a telephonic talk. In the midnight at about

12:30 a.m. on 24.12.2015, the informant received a telephonic call from his cousin Mangesh Mirage that the deceased was assaulted near Paranjape Scheme Gate. The informant went there and saw that the vehicle of the deceased was stuck in a ditch near the main road. The informant's other cousin Vikas Mirage was present there and he told the informant that Vijay Mirage was assaulted on his head and he was serious. Vijay Mirage was moved to Sahyadri Hospital at Pune. The informant asked the Watchman Kishor Bangar, who was on duty nearby. He informed that at around 12:10 a.m., some unknown person assaulted Vijay at that spot with knife. On this basis, the FIR was lodged. The investigation was carried out.

3. During investigation, the provisions of MCOCA were invoked. The approval was granted under Section 23(1)(a) of MCOCA on 16.3.2016. The applicant was shown as accused No.7.

4. As mentioned earlier, the applicant was arrested on 5.12.2016. Prior to that the charge-sheet was filed and sanction was granted under Section 23(2) of MCOCA on 29.6.2016. The investigation shows that the applicant's co-accused Tushar alias Appa Gogawale was having two antecedents prior to this offence i.e. (i) C.R. No.164/2014 at Dattawadi Police Station under Sections 302, 307, 143 of I.P.C. and (ii) C.R. No.31/2015 at Paud Police Station under Section 399 of I.P.C. The applicant had only one antecedent i.e. C.R. No.164/2014 at

Dattawadi Police Station. Besides this offence mentioned in the charge-sheet, the learned A.P.P. has pointed out that there was one more offence i.e. C.R. No.178/2015 registered against the applicant at Sinhagad Police Station under Section 307 of I.P.C. Learned Counsel Shri Sarda seriously disputes the applicant's name having been included in the list of the accused in connection with C.R. No.178/2015 registered at Sinhagad Police Station. However, the basis of invoking the MCOCA was that there were more than one charge-sheets against Tushar alias Appa Gogawale of which cognizance was taken by the competent Courts.

5. I have heard Shri Sarda, the learned Counsel for the applicant and Smt. Takalkar, the learned A.P.P. for the State. With their assistance, I have perused the charge-sheet annexed to this application. Both of them invited my attention, in particular to the relevant material in this charge-sheet.

6. Shri Sarda submitted that there was no motive for the applicant to commit this offence. In fact, the prosecution case is not that he had taken part in the actual commission of the murder. He submitted that there is nothing to show that he was a party to the conspiracy to commit the murder. He further submitted that only because there is a vague reference to his name in the confessional statement of the co-accused Tushar alias Appa Gogawale recorded under Section 18 of MCOCA and because he was a co-accused in C.R. No.164/2014

registered at Dattawadi Police Station with the accused Tushar alias Appa Gogawale, he is implicated in this case. However, that would not amount to continuing unlawful activity as envisaged under the MCOCA.

7. The learned A.P.P. opposes the application on the ground that the applicant was co-accused in two offences with the co-accused Tushar. However, Shri Sarda stated that said Tushar alias Appa Gogawale is already granted bail by the Special Court.

8. I have considered these submissions and in particular I have perused the statements of two eye witnesses, namely, Kishor Bangar who was the Watchman referred to by the first informant. This witness had actually seen the incident. In his statement dated 24.12.2015, he has stated that he had seen the accused Amar Sanas assaulting the deceased on his head with a weapon like sickle. He has seen one more person with the accused Amar Sanas. Other witness Mangesh Mirage had seen the accused Amar Sanas assaulting the deceased with sickle and he had also seen the accused Samir Sanas leaving the spot in a hurry on motor-cycle around the same time. Besides these two witnesses, there are no eye witnesses in the entire charge-sheet. Therefore, it is not the prosecution case that the applicant was present at the spot when the incident had occurred.

9. There are witnesses whose statements are recorded in the context of evidence of conspiracy. These witnesses are Mayur Salunkhe

and Abhishek Kavade. The sum and substance of their statements are that a few months prior to the incident they had seen the accused conspiring together to eliminate the deceased as the deceased had grown in his construction business and was also contesting elections. Both of them have attributed specific role to the accused Tushar alias Appa Gogawale. However, significantly neither of these witnesses has mentioned the presence of the applicant on these occasions when other accused were discussing about their conspiracy. Therefore, even this circumstance cannot be held against the applicant.

10. The other only piece of evidence worth mentioning is the confessional statement of the accused Tushar recorded under Section 18 of MCOCA. He has described as to how he had procured the weapon and how the accused Mayur Sanas was after him mentioning that Vijay Mirage must be murdered. The only reference in this confessional statement to the applicant is that on 25.12.2015 the accused Mayur Sanas came to this accused Tushar and told him that Vijay Mirage was murdered. Thereafter this accused Tushar, his two friends Pritam and the present applicant went to Modnimb Tembhurni and then to Goa. Thus, the only evidence against the present applicant is that he had accompanied the accused Tushar to Goa. There is nothing in the charge-sheet to show his connection with the main crime of commission of murder of the deceased Vijay Mirage.

11. Considering these aspects, I am of the considered view that the evidence against the applicant is almost non-existent and, therefore, his antecedents should not come in his way in seeking bail. Though, he was a co-accused with the accused Tushar in the past, there is absolutely no connection of the applicant with the present crime. Therefore, it can safely be observed that there are reasonable grounds for believing that the applicant is not guilty of such offence under MCOCA. Though, it is always difficult to predict future and observe whether he is likely to commit any offence while on bail, this apprehension can be taken care of by imposing suitable conditions. In this view of the matter, I am inclined to grant bail to the applicant. Hence, the following order :

ORDER

- i. The applicant is directed to be released on bail in connection with C.R. No.267/2015 registered with Paud Police Station, Pune, on his furnishing a P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- ii. The applicant is directed to attend the concerned Police Station on first Monday of every month between 10:00 a.m. to 11:00 a.m., till conclusion of the trial.
- iii. The application is disposed of accordingly.

(SARANG V. KOTWAL, J.)