

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

BAIL APPLICATION NO.1164 OF 2018

Sajid Ibrahim Sayyad	.. Applicant
<i>Vs.</i>	
State of Maharashtra	.. Respondent

**WITH
BAIL APPLICATION NO.3418 OF 2019**

Sachin Damodar Ekhatpure	.. Applicant
<i>Vs.</i>	
State of Maharashtra	.. Respondent

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Mr.Harshad Sathe i/b. Mr.B.A. Lawate, Advocate for the Applicant in BA 1164 of 2018.

Mr.Priyal G. Sarda, Advocate for the Applicant in BA 3418 of 2019.

Mr.H.J. Dedhia, APP for the Respondent-State in BA 1164 of 2019.

Mrs.A.A. Takalkar, APP for the Respondent-State in BA 3418 of 2019.

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CORAM : PRAKASH D. NAIK, J.

DATED : MARCH 04, 2020.

P.C. :

The applicants in both these applications were arrested in connection with C.R.No.517 of 2016, registered with Akulj Police Station, Solapur Rural, for the offence punishable

under Section 307 read with 34 of Indian Penal Code (“IPC”, for short) and Section 3(25) of the Arms Act. Subsequently, the charge under Section 307 is altered to Section 302 of IPC. During investigation, the provisions of MCOC Act were invoked under Sections 3(1)(i), 3(2), 3(3) and 3(4) of MCOC Act.

2 The case of the prosecution is that First Information Report (“FIR”, for short) was lodged by Aniket Umbre on 29th December, 2016. It is alleged that the complainant and his maternal uncle Nanasaheb Dilip Aasbe were chit chatting in front of Ashwini Hotel. Two persons aged about 25 years arrived there on motorcycle with mask on their faces. They fired at Nanasaheb Aasbe. He tried to run from the place of incident. The accused again fired at him. After a period of about one month, injured succumbed to the injuries. Charge under Section 302 of IPC was invoked.

3 Both the applicants were arrested. Applicant in Bail Application No.1164 of 2019, is arrested on 19th January, 2017 and the applicant in Bail Application No.3418 of 2019, was arrested on 30th October, 2017. On completing investigation, charge - sheet was filed.

4 Learned advocate for the applicant appearing in Bail Application No.1164 of 2018, submitted that the applicant has been falsely implicated in this case. He is not member of crime syndicate. He had not played any role in the incident. He was not present at the place of incident. One case was registered against him in past for the offences punishable under Sections 143, 147, 149 and 188 vide C.R.No.190 of 2014, with Akluj Police Station. He was not member of conspiracy. The confessional statement of co-accused Ramesh Ghule recorded under Section 18 of MCOC Act, do not implicate him. He is in custody since last three years. CDR is not incriminating against him.

5 Learned advocate for the applicant in Bail Application No.3418 of 2019, submits that there is no evidence to show that the applicant is member of crime syndicate. There are no antecedents against the applicant. He had no animosity with the deceased. He has been falsely implicated in this case. There is no evidence to show that the applicant as a member of the gang headed by the co-accused had participated in any crime. Except the confessional statements where there is a vague reference of the applicant, there is no evidence against him. He is in custody from the date of arrest. Applicant was not present at the place of incident. The victim had died after a period of about one month.

6 Learned APP submitted that there is sufficient evidence against both the applicants. It is submitted that the provisions of MCOC were applied in this case. The offence is of serious nature. The accused had hatched conspiracy to liquidate Nanasaheb Aasbe. The gang is headed by Pradeep Mane. There are several cases registered against him. Applicant Sajid Ibrahim Sayyad had made a call to accused no.8 on 26th December, 2016 at about 10:16 a.m.

7 It is submitted that there is sufficient evidence against applicant Sachin Damodar Ekhatpure. The conspiracy was hatched to liquidate Nanasaheb Aasabe. In pursuant to the conspiracy, he was shot by two persons. The victim succumbed to injuries. The said applicant is active member of the gang. The conspiracy was hatched in the presence of the gang member. Confessional statement of Ramesh Ghule was recorded under Section 18 of MCOC Act. He has attributed role to applicant Sachin Damodar Ekhatpure. He had participated in the conspiracy. It is further submitted that statement of Nilesh More recorded on 29th April, 2017, mentions that at the instance of the applicant, shelter was provided to the co-accused. The offence is of serious nature. There is CDR Record, which shows the involvement of the said applicant.

8 I have perused the charge-sheet. The incident had occurred on 29th December, 2016. Two persons came on motorcycle and they shot at Nanasaheb Aasbe. Their faces were covered with masks. The firing was made from close range. The deceased had sustained injuries and he succumbed to the injuries. The confessional statement of Ramesh Ghule was recorded under Section 18 of MCOC Act. The said confessional statement refers to the time and place, where the conspiracy was hatched. There was a reference of presence and involvement of the applicant Sachin Damodar Ekhatpure in the said conspiracy. The victim was shot in pursuant to the conspiracy. The active involvement of Sachin Damodar Ekhatpure has been referred to in the investigation. According to prosecution, CDR Record shows that the said applicant Sachin Damodar Ekhatpure was in touch with the other accused. The offence is of serious nature.

9 Prosecution is also relying upon the statement of co-accused Parmeshwar @ Deva Nanaso Jadhav, which according to prosecution shows involvement of both the accused. However, the said statement cannot be read as legally admissible evidence against the accused. The prosecution is relying on the statement of Sunil Ingle and Dattu Maruti Kondalkar. These witnesses are

eye witness to the incident. After the arrest of the accused, their supplementary statements were recorded in which they have stated that they know applicants.

10 Prosecution could not point out any other evidence against the accused Sajid Ibrahim Sayyad except the fact that he had made one call on 26th December, 2016, to co-accused Sagar Mohite. Thus, there is lack of evidence showing the involvement of applicant Sajid Ibrahim Sayyad in this crime. He is not involved in any other case along with gang leader Pradeep More. However, as far as the applicant Sachin Damodar Ekhatpure is concerned, his role has been spelt out in the confessional statement of co-accused Ramesh Ghule, he was part of conspiracy. The prosecution is also relying on statement of witness Nilesh More. The applicant Sachin provided shelter to co-accused. There are no criminal antecedents against him. His involvement is apparent in record. The offence is of serious nature. In the circumstances, accused Sachin Damodar Ekhatpure, is not entitled for bail.

11 Hence, I pass the following order:

:: O R D E R ::

- (i) Bail Application No.1164 of 2018, is allowed;

- (ii) Applicant Sajid Ibrahim Sayyad, is directed to be released on bail in connection with C.R.No.517 of 2016, registered with Akluj Police Station, Solapur Rural, on his executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) Applicant Sajid Ibrahim Sayyad shall report concerned Police Station, once in a month on first Saturday of the month between 11:00 a.m. to 01:00 p.m., till further order;
- (iv) Bail Application No.3418 of 2019, preferred by Sachin Damodar Ekhatpure, stands rejected;
- (v) Bail Applications stand disposed of.

(PRAKASH D. NAIK, J.)