

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1367 OF 2019

Sameer Rajnikant Sadavarte, Age 42 years,
Occ.Business, R/o.801, Kumar Millenium
Shivtirth Nagar, Kothrud, Pune
(Presently lodged in Prison)

Applicant

versus

The State of Maharashtra

Respondent

WITH

CRIMINAL APPLICATION NO.982 OF 2019

Atit Deven Shah

Applicant

versus

The State of Maharashtra and another

Respondent

Mr.A.PMundargi, Senior Advocate, i/by Mr.Subir Sarkar for applicant.

Mr.Sanjeev P. Kadam with Prashant P. Raul i/by Vilasini Balasubramanian for intervenor.

Mr.H.J.Dedhia, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 24th February 2020

PC :

1. This is an application for bail in CR No.10 of 2018 registered at Deccan Police Station, Pune for offences under Sections 302, 307, 120-B, 201 of Indian Penal Code and under Section 3(25) and 3(27) of Arms Act. Subsequently provisions of Sections 3(1)(i), 3(2), 3(3) and 3(4) of MCOC Act were invoked. The complaint was lodged by son of the deceased.

2. The case of prosecution is that since 2012 the deceased was having dispute in respect of transactions of different lands with

accused Nitin Dangat and applicant. In 2015 the deceased Deven Shah tried to settle the dispute through Rajesh @ Pandit Agarwal, Ravindra Chorge and associates. Rajesh @ Pandit Agarwal received Rs.75 lakh as part payment of his commitment from deceased Deven Shah. Subsequently the deceased had allegedly avoided to pay the remaining part payment of Rs.30 lakh to Rajesh @ Pandit Agarwal and his associates. Taking advantage of the situation, Nitin Dangat and applicant with a view to obtain pecuniary gain, conspired to murder Deven Shah with the help of Sonu Rathod and his gang members. It is further alleged that Sonu Rathod provided country made pistol to Rahul Shिवtare. Nitin Dangat transferred Rs.2 lakh in the account of Rajesh @ Pandit Agarwal. In turn, Rajesh Agarwal had provided pistol and rounds to Ravindra Chorge. Rahul Shिवtare and Ravindra Chorge in furtherance of the conspiracy committed murder of Deven Shah by using country made pistol provided by accused Sonu Rathod and Rajesh Agarwal. Subsequently the shooters Ravindra Chorge and Rahul Shिवtare were kept in lodge at Ujjain. Ravindra Chorge was arrested. He was provided shelter by Abhimanyu Tiwari. Subsequently Rahul Shिवtare was arrested. The weapons used in commission of crime were seized at the instance of Ravindra Chorge while memorandum panchanama from the office of co-accused Surendra Pal. Subsequently approval was sought for invoking provisions of MCOC Act, which was granted. The investigation proceeded. The applicant and other accused were arrested. On completion of investigation charge sheet was filed.

3. The applicant had preferred application for bail before Special Judge under MCOC Act. The said application was rejected.

4. Learned counsel for applicant submitted that there is no evidence against the applicant in the present crime. The prosecution could not establish the link with the applicant and the murder of deceased Deven Shah. From the statements of witnesses, confessions of co-accused and other material on record, it is evident that the deceased was liquidated for totally different reason which is unconnected with the transactions with the applicant. It is submitted that the co-accused in their confessions u/s 18 of MCOC Act have clearly stated that they have killed the deceased on account of non payment of commission which was due to be paid by him for the transactions which were executed in past and in spite of repeated requests, he was not fulfilling the promise. Learned counsel pointed out the statement of complainant, supplementary statement and statements of other witnesses. It is submitted that the statement of complainant as well as Vijay Hazare recorded during the course of investigation do not attribute any role to the applicant in murder of Deven Shah. It is submitted that the applicant is not connected with the main accused, who are involved in unlawful activities. There are no criminal cases against the applicant as a member of crime syndicate. The applicant was dealing in land and has no connection with violent acts or criminal acts attributed to the gang leader. The prosecution has not established any connection between the applicant and the gang leader Sonu Rathod, nor there is any connection between the applicant, shooters Ravindra Chorge and Rahul Shivtare. The applicant had some connection with Nitin Dangat as they were involved jointly in the land dealings with Deven Shah. The applicant is also not concerned with Rajesh Agarwal who is connected with the assailants. There is no evidence to establish

that the applicant was conspirator to kill Deven Shah. The complainant has improvised his version in the subsequent statement. The version is also vague which do not lead to any conclusion that the applicant has any role in offence of murder. He pointed out the statement of Kishor Aaware, Prakash Vighne recorded on 18th January 2018 and 22nd June 2018 and submitted that taking the statements of these witnesses, it cannot be said that the applicant is responsible for committing the murder. On the contrary, the evidence on record indicate that the co-accused to whom the deceased was allegedly liable to pay the commission, had liquidated him for not fulfilling the alleged promise. Learned counsel took me through the confessional statement of Ravindra Chorge and submitted that the said accused has categorically stated that the commission was to be received from Deven Shah. Initially part payment was made. The accused were in need of money and in spite of repeated requests payment was not made,. Hence, he was killed. Learned counsel also took me through confession of Rahul Shिवtare recorded on 8th June 2018 in which also according to him the accused reiterated the version of the co-accused Ravindra Chorge. It is, therefore, submitted that there is no material to invoke provisions of MCOC Act against applicant. He is in custody from the date of arrest. He has no criminal background.

5. Learned APP submitted that there is voluminous evidence to show the involvement of applicant in the crime. He is the prime accused. He had several transactions with Deven Shah along with Nitin Dangat. The submissions advanced by learned counsel for applicant are required to be appreciated at the time of trial. It is submitted that on the day of incident, there was telephonic call

between the applicant and Deven Shah. On that day there were calls inter se between Ravindra Chorge and Rajesh Agarwal, Ravindra Chorge and Rahul Shिवtare, Ravindra Chorge and Nitin Dangat. It is further submitted that during the period of 1st April 2017 and 12th January 2018 there were several calls between accused Ravindra Chorge, Rajesh Agarwal, Nitin Dangat, Rahul Shिवtare, Deven Shah and applicant. There were calls between applicant and Nitin Dangat and vice versa. There were calls between applicant and Deven Shah. There are several calls between Ravindra Chorge and Rajesh Pandit, Ravindra Chorge and Nitin Dangat and between Nitin Dangat and Sameer Sadavarte (applicant). It is thus submitted that the nexus of the applicant with the co-accused was established during investigation. The prosecution has filed affidavit-in-reply to oppose the application for bail. It is contended that during the course of investigation it was revealed that the deceased Deven Shah is builder in Pune City. The applicant was introduced to the deceased by co-accused Nitin Dangat. There were transactions between applicant and deceased regarding 400 acres of land. The memorandum of understanding was executed between the deceased Deven Shah and applicant on 18th April 2018. The deceased and his partners had invested Rs.14.5 crores in land located at Paud in the year 2008. In the year 2012 one more transaction of 152 acres was executed between the deceased and applicant with the help of Nitin Dangat. Cheques were issued from time to time towards satisfaction of transaction. Nitin Dangat withdrew himself from the said transaction, however, he was assisting the deceased Deven Shah and the applicant to complete the transaction. The applicant and Nitin Dangat had to pay a sum of Rs.3 crores and Rs.2.25 crores respectively to the deceased towards advance commission accepted

by them. In between underworld intervened and he also spoke with the deceased at the instance of Nitin Dangat and present applicant. The outstanding commission amounts were not returned to the deceased by Nitin Dangat and applicant. It is further alleged that both of them did not keep their promise of transfer of land in favour of deceased Deven Shah and to avoid monetary liability, the conspiracy was hatched to kill Deven Shah. It is alleged that the accused were members of organized crime syndicate and involved in activities prohibited by law. The statement of accused no.1 was recorded u/s 18 of MCOC Act and accused no.2 was recorded on 7th June 2018. There are cases against gang leader. The offence is of serious nature. The applicant took active part. The statements of accused were recorded u/s 18 of MCOC Act in which they disclosed their involvement.

6. Learned counsel for intervenor also opposed grant of bail. He submitted that the applicant is involved in crime. The dispute was on account of money. On the day of incident, there were calls between the applicant and deceased. At this stage the defence cannot be considered.

7. I have perused the documents on record. The transactions had taken place in between applicant, co-accused Nitin Dangat and deceased Deven Shah. There were dealings in land between them. The statements of complainant and other witnesses refer to nature of transactions between the applicant and deceased Deven Shah. In the light of the evidence collected during the course of investigation, at this stage, it is not possible to give any finding that the applicant has no role to play in the crime. Learned counsel for applicant has

heavily relied upon the confessional statement of accused Ravindra Chorge and Rahul Shivtare. However, on the basis of said versions, the applicant cannot be exonerated from his involvement. There are several circumstances to show the involvement of applicant. The statements of witnesses Vijay Hazare, Prakash Vighne and others describe incriminating circumstances. Rahul Shivtare and Ravindra Chorge were alleged shooters who had shot at the father of complainant. The co-accused were granted bail on different grounds and applicant is not entitled for parity. It also appears from the statement of Rahul Shivtare that he had implicated the co-accused Shankar Navle and benefit of that version was given to him while granting bail. The prosecution is relying upon calls made between the parties. On the day of incident there was call between the applicant and deceased. In the past for a period between 1st April 2017 and 12th January 2018, there were several calls inter se, between applicant and Nitin Dangat, applicant and Deven Shah and there are several calls between Nitin Dangat and other accused including the shooters. Link between the co-accused and applicant can be established through call record. Prima facie involvement of the applicant in the case is established.

8. In the light of nature of material and embargo u/s 21(4) of MCOC Act, no case for grant of bail is made out. Criminal Bail Application No.1367 of 2019 is rejected. Criminal Application No.982 of 2019 is allowed and disposed of.

(PRAKASH D. NAIK, J.)

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