

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

CRIMINAL BAIL APPLICATION NO.297 OF 2020

Akshay Jalindar Hargude	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Aabad Ponda, Senior Advocate i/b. Karma Vivan, for the Applicant.

Mrs. A.A. Takalkar, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 24th FEBRUARY, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.44/2019 registered at Bhuinj police station, District-Satara on 25.3.2019 under Sections 307, 326, 143, 147, 148, 149 of the Indian Penal Code, under Sections 3, 5 & 25 of the Indian Arms Act and under Section 37 read with 135 of the Maharashtra Police Act. Subsequently,

Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short, 'the MCOC Act') were applied. The Applicant was arrested on 30.3.2019 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. Initially, the FIR was registered and investigation was carried out for the offences punishable under the Indian Penal Code and other offences. On 5.5.2019, the approval under Section 23(1) of the MCOC Act was granted and thereafter the investigation was carried out under the provisions of the MCOC Act. After conclusion of the investigation, the approval under Section 23(2) of the MCOC Act to prosecute the accused, under the provisions of the MCOC Act was accorded on 23.9.2019.

3. Heard Shri Aabad Ponda, learned Senior Counsel for the Applicant and Smt. A.A. Takalkar, learned APP for the State.

4. The prosecution case, which is substantially mentioned in the FIR itself, is as follows.

5. The FIR was lodged by one Pandurang Pawar. He has stated that he was working with Anewadi Toll Plaza. On 25.3.2019, he was in-charge of the toll plaza on Satara-Pune Highway within the limits of Virmade village. He was accompanied by his co-employees Vishal Raje, Ranjeet Kasabe, Sumit Pawar, Kiran Sonawane, Dattatraya Kale, Vikas Sawant etc.. At about 1:00 a.m. in the night, one Swift car bearing No.MH-12-NJ-302 passed through the toll plaza without paying the toll. The car was stopped a little ahead of the toll plaza. The driver was requested to pay the toll. However, he refused. He told the informant that they were the Partners of Khed-Shivapur Toll Plaza and, therefore, they will not pay the toll. The informant insisted that they must pay the toll. Thereafter the driver and others started quarreling with the informant and started abusing them. In the meantime, they contacted somebody telephonically. Within 5 to 10 minutes, two Fortuner cars came there. From those cars, 4 to 5 persons got down. They started approaching the informant. The informant was knowing one of them as Rohidas @ Bapu

Chorghe. The passengers of Swift car told Bapu Chorghe that they were assaulted. Bapu Chorghe, in turn, took out a pistol and fired in the direction of the informant. The informant started to run away. One more person accompanying Bapu Chorghe also fired at him. In the meantime, the informant's companion Vishal Raje fell down. One of the passengers of Swift car who had sat next to the driver assaulted him with a concrete block. The informant's other companion Vikas Shinde tried to remove his pistol from hands of Bapu Chorghe. After that, Bapu Chorghe and others left the place in their vehicles. On this basis, the FIR was lodged.

6. As mentioned earlier, subsequently the provisions of MCOC Act were invoked. In the meantime, the Applicant was already arrested on 30.3.2019. It was mentioned in the approval under Section 23 of the MCOC Act that the main accused Bapu Chorghe had formed an organized crime syndicate and other accused were the members of such syndicate. The syndicate was committing many offences. The approval gives list of antecedents against all the accused.

Significantly, there is not a single offence registered against the present Applicant except the present case. It was alleged that this syndicate was committing the offences for pecuniary and other advantages.

7. Learned Senior Counsel for the Applicant submitted that it was a small incident and though the accused had two pistols, nobody from the informant's group has suffered any fire-arm injury. The only injured was Vikas Shinde, but, that was caused by co-passenger of the present Applicant in Swift car. The Applicant had not taken part in the actual assault. There are no allegations that he has caused any injury. He submitted that the allegations against the present Applicant at the highest are that he refused to pay the toll and started quarreling with the informant and his group. Beyond that there is no material against him. He submitted that the prosecution evidence does not show that the applicant was ever in touch with the gang leader Bapu Chorghe. He submitted that for this small incident and his presence at the spot at the time of such incident, the Applicant

has spent for about two years in custody. No offence under the MCOC Act is made out against the present Applicant and, therefore, he deserves the order of release on bail.

8. Learned A.P.P. opposed this application. The investigating officer has filed his affidavit dated 2.11.2020 pointing out the nature of evidence against the present Applicant.

9. The affidavit mentions that the evidence revealed that the gang leader Rohidas @ Bapu Chorghe and co-accused Sopan Chorghe wanted one shift to run Khed-Sivapur Toll Plaza. But, aforementioned Vikas Shinde had refused to accept their demand and, therefore, there was enmity between Rohidas Chorghe and Vikas Shinde. According to the prosecution, this was the cause of incident. The affidavit goes on to mention the offences registered against Rohidas Chorghe.

10. As far as the present Applicant is concerned, the material against him is that the Swift car which was involved

in the offence was intercepted and at that time the Applicant was in the car. Thereafter the car was seized by the investigating agency. The CCTV footage shows presence of the present Applicant at the scene of the offence. He was identified by the witnesses Vishal Raje, Kiran Sonawane and Vikas Sawant in the test identification parade.

11. There is a Call Data Record [CDR] showing that the Applicant was in touch with the accused Yuvraj Wabale, Vaibhav Sabale and Sachin Dhore on many occasions. Co-accused Sachin Dhore, in turn, was in contact with the gang leader. Therefore, the prosecution case was that the Applicant was working for the gang leader.

12. I have considered all these submissions. With the assistance of learned Senior Counsel for the Applicant and learned A.P.P. for the State, I have perused the charge-sheet.

13. In this context, the statements of the eye witnesses Vishal Raje, Vikas Sawant and Kiran Sonawane are important because they have identified the Applicant in the

identification parade. The presence of the Applicant at the scene of offence, at the time of occurrence, is not seriously disputed even by the Applicant. Therefore, his role is required to be examined. All these three eye witnesses have given identical statements on 25.3.2019. They have stated that at the time of incident the aforementioned Swift car went ahead without paying toll. When the car was stopped, the driver was asked to pay the toll. He had refused. He had told that they were the Partners of Khed-Shivapur Toll Plaza. Then there was quarrel and the Applicant abused. It is their case that after that somebody called the gang leader telephonically. Others came in two different vehicles and then there was further incident.

14. The eye witness Vishal Raje fell down while running away. At that time, the person who was sitting next to the driver in the Swift car picked up a concrete block and assaulted him. Vishal Raje has suffered displaced fracture of mandible on the right side. However, this injury is not attributed to the present Applicant. It was specifically

attributed to the person who was sitting next to the driver. The prosecution case is that the Applicant was driving the Swift car. The incident of assault on Vishal Raje with the concrete block was not pre-meditated and, therefore, it is difficult to attribute common intention to the present Applicant for the injuries caused to the witness Vishal Raje. Beyond these allegations, there are no allegations that the Applicant had taken any part in the entire incident.

15. There are no antecedents against the present Applicant and, therefore, there is no previous offence committed by him for and on behalf of either Rohidas @ Bapu Chorghe the gang leader or his crime syndicate. At the highest the allegations against the Applicant are that he had refused to pay the toll and had started quarreling. Significantly, there is nothing to show that the Applicant himself had called Rohidas Chorghe or anybody else and had asked the others to come at the spot to assault the informant and his group. The prosecution case in that respect is not against the present Applicant.

16. The allegations that he was telephonically in touch with other co-accused during past three months before the incident does not indicate that he was working for that particular syndicate. There is no communication between the Applicant and the gang leader Rohidas @ Bapu Chorghe.

17. In this view of the matter, there are reasonable grounds to believe that the Applicant has not committed any offence under the MCOC Act. The Applicant does not have any criminal antecedents. Therefore, there are reasons to believe that he is not likely to commit similar offences in future while on bail. In this view of the matter, the bar of Section 21(4) of the MCOC Act will not attract against him for denial of bail to him.

18. Considering the lesser role played by the Applicant and taking into account the long period of detention which he has already undergone as an under-trial prisoner, the Applicant deserves to be released on bail. Hence, the following order :

ORDER

- (i) In connection with C.R.No.44/2019 registered at Bhuinj police station, District-Satara, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant shall attend the concerned police station every fortnight for a period of one year from today and he shall attend the trial on every date.
- (iii) The Applicant shall not try to tamper with the evidence or influence the witnesses in any manner.
- (iv) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)