

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

CRIMINAL BAIL APPLICATION NO.980 OF 2021

1. Mahesh Hindurao Desai	
2. Ganesh Hindurao Desai	
3. Sunil Krushna Kamble	...Applicants
Versus	
The State of Maharashtra	...Respondent

Mr. Pranav P. Pokale, for the Applicants.

Mr. H. J. Dedhia, A.P.P for the Respondent – State.

CORAM : REVATI MOHITE DERE, J.

DATE : 16th SEPTEMBER, 2021

(THROUGH VIDEO CONFERENCING)

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicants seek their enlargement on bail in connection with C.R. No. 5 of 2019 registered with the Ajara Police Station, Kolhapur, for the alleged offences punishable under Section 395 of the Indian Penal Code; Section 4(25) of the Arms Act; 65(e) of the Maharashtra Prohibition Act and Section 3(3) of the Maharashtra Control of Organized Crime Act ('M. C. O. C. Act').
3. Learned Counsel for the applicants submits that the applicants have been arraigned as accused in C.R. No. 5 of 2019, in which the

applicants were not even remotely connected. He submits that the applicants have no antecedents. He submits that the applicants are languishing in jail, in a case, where there is no iota of evidence against them.

4. Learned APP fairly states that the applicants are not in anyway connected with the present C.R. He states that the allegation as against the applicants is that they gave shelter to Shridhar Shingate, after he absconded from the Court. Learned APP fairly states that the applicants ought to have been made accused in the C.R. registered with the Gadhinglaj Police Station i.e. C.R. No.106 of 2020, which has not been done, instead of the present C.R.

5. Brief facts as are necessary to decide the aforesaid application are as under:-

On 6th January 2019, the complainant – Suraj Kalekar was accosted by 5 accused (not the applicants). The said 5 accused assaulted the complainant with fist blows and took away his gold chain, gold ring, mobile phone and cash of Rs.5,500/-. Pursuant thereto, the complainant - Suraj Kalekar, lodged an FIR with the Ajara Police Station, Kolhapur, on 9th January 2019, which was registered vide C.R. No. 5 of 2019, as against

5 accused persons, for the alleged punishable under Section 395 of the Indian Penal Code; Section 4(25) of the Arms Act and Section 65(e) of the Maharashtra Prohibition Act. It appears that subsequently, sanction was obtained and on 17th September 2019, Section 3(3) of M. C. O. C. Act was invoked, *qua* the 5 accused (not the applicants). It appears that the learned Sessions Judge vide order dated 21st June 2019, granted bail to accused Nos.2 to 5 in the said C.R. i.e. C.R. No. 5 of 2019 registered with the Ajara Police Station, Kolhapur.

On 4th March 2020, accused No.1 - Shridhar Shingate, who was in custody in the said C.R. i.e. C.R. No. 5 of 2019 registered with the Ajara Police Station, Kolhapur, was taken before the learned Magistrate, Gadhinglaj, in connection with another C.R. i.e. C.R. No.13 of 2019, registered with the Nesari Police Station, as against him for the offences punishable under Sections 387, 504, 506 and 507 of the Indian Penal Code. It appears that the said accused No.1 - Shridhar Shingate fled from police custody on the said day i.e. 4th March 2020, pursuant to which, an offence was registered as against accused No.1 - Shridhar Shingate i.e. C.R. No.106 of 2020, with the Gadhinglaj Police Station, for the offences punishable under Sections 224 and 212 of the Indian Penal Code.

After accused No.1 - Shridhar Shingate escaped, on receipt of secret information, it was revealed that the applicant No.3 - Sunil Kamble

had helped accused No.1 - Shridhar Shingate escape, and that the said accused was given shelter by the applicant Nos.1 and 2 in their house. Accordingly, the police raided applicant Nos.1 and 2's house and accused No.1 - Shridhar Shingate was taken into custody. The applicants were also arrested by the police on 15th March 2020. The allegation as against the applicants is they had given harbour to accused No.1 - Shridhar Shingate in their house.

It appears that the said applicants were arraigned as accused in the original C.R. i.e. C.R. No. 5 of 2019 registered with the Ajara Police Station, Kolhapur, after obtaining sanction under the M.C.O.C. Act. Having regard to the facts, it is shocking to note on what basis the Competent Authority granted sanction to prosecute the applicants in the said C.R. i.e. C.R. No. 5 of 2019 registered with the Ajara Police Station, Kolhapur, despite the applicants having no connection, even remotely, in the said C.R. The learned APP fairly concedes that there is no material to connect the applicants in the present C.R. It is surprising to note, that infact, the applicants were not arraigned as accused in C.R. No.106 of 2020, registered with the Gadhinglaj Police Station, as against Shridhar Shingate and others, for the alleged offences punishable under Sections 224 and 212 of the Indian Penal Code, since according to the prosecution, the applicants had given shelter to Shridhar Shingate, after he absconded from

police custody. Admittedly, the applicants have absolutely no connection with C.R. No. 5 of 2019 registered with the Ajara Police Station, Kolhapur, and as such there was no justification whatsoever to arrest the applicants in the said C.R. The applicants at the highest could be arraigned in C.R. No.106 of 2020, registered with the Gadhinglaj Police Station, for giving shelter/harboursing Shridhar Shingate, however, the same has not been done. The application of M.C.O.C. Act and other provisions as against the applicants, in the facts, *prima facie*, appears to be a gross misuse and abuse of the said provisions. The applicants are languishing in jail since 15th March 2020 in a case in which the applicants have no connection. Considering the aforesaid, there are reasonable grounds for believing that the applicants have not committed the alleged offence.

6. Considering the aforesaid, the application is allowed and the applicants are enlarged on bail on the following terms and conditions:-

ORDER

- (i) The applicants be released on cash bail in the sum of Rs. 15,000/- each, for a period of eight weeks;
- (ii) The applicants shall within the said period of eight weeks, furnish P.R. Bond in the sum of Rs. 15,000/- each with one or two sureties in the like amount;

- (iii) The applicants shall attend the concerned Police Station on the first Saturday of every month from 10:00 a.m. to 1:00 p.m. till the conclusion of the trial;
- (iv) The applicants shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (v) The applicants shall inform their latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station.

7. The application is allowed in the aforesaid terms and is accordingly disposed of.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.