

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

BAIL APPLICATION NO.153 OF 2020

Suresh Swaminath Zende

.. Applicant

Versus

State of Maharashtra

.. Respondent

.....
Mr.Priyal G. Sarda, Advocate for the Applicant.

Mr.R.M. Pethe, APP for the Respondent - State.

.....

CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 25, 2021.

P.C. :

This is an application for bail. The Applicant is arrested on 14th September, 2017. Initially, C.R.No.183 of 2017, was registered on 11th April, 2017, with Bharti Vidhyapeeth Police Station, Pune, for offences punishable under Section 224 read with 34 of Indian Penal Code ("IPC", for short). The said FIR was lodged by Sanjay Chandanshiv, police head constable. He was assigned duty as Guard Amaldar incharge. It was alleged that the accused no.1 Raju Mahadeo Patre, accused no.2 Santosh Machindra Jagtap, accused no.3Lubhya @ Santosh Chintaman Chandilkar were detained at Yerawada Central Prison. They were

to be produced before the Court of Judicial Magistrate First Class, Khandala, District-Satara. On 10th April, 2017, from Yerawada prison. They proceeded by van. They reached the Court at 14:00 p.m. The case was adjourned to 21st April, 2017. Accused were to be taken back to Yerawada prison. They proceeded towards Yerawada jail. Accused were not handcuffed. While they reached Katraj Ghat, vehicle was stopped as accused wanted to answer nature's call. Accused got down from vehicle. They pushed police party and managed to escape in jungle by taking advantage of darkness. Police chased them but could not trace them.

2 Subsequently, First Information Report ("FIR", for short) was registered with Pimpri Chinchwad Police Station, Pune, since it was revealed that the incident had occurred within the jurisdiction of said police station vide C.R.No.352 of 2017 for the offences punishable under Sections 224, 34 of IPC. The FIR is dated 23rd June, 2017. Thereafter, Section 115 read with Sections 302, 219 and 223 read with Section 3, 5 and 25 were added. Sections 212, 216, 219, 223, 225, 417 and 419 of IPC were also added. Approval for invoking provisions of MCOC Act was granted on 8th November, 2017. Sanction was granted on

8th March, 2018, under provisions of Section 3(1)(II), 3(2), 3(3) and 3(4) of MCOC Act.

3 During the course of investigation, it was revealed that the accused Sushil Mancharkar is involved in politics. He came in contact with the gang leader Santosh @ Lubhya Chandilkar. Sushil Mancharkar wanted to liquidate Kailas Kadam. There was a conspiracy by him. The persons who escaped from the custody were contacted and contract was given to them to kill Kailas Kadam. The co-accused Sushil Mancharkar activated the proceedings in the Court at Khandala. The accused no.10 Vijay Waghmare working as Police Naik was entrusted work of allotment of police personal for taking accused persons to Courts from the jail. The applicant and other accused ensured that same police personals are deputed to taking accused no.1, accused no.2 and accused no.15 to the Court from the jail. Accused No.14 Subhash Khade was deputed for the said work. The accused had appeared in the trial Court for about 11 dates. With the assistance of the police, the accused managed to flee from custody. However, subsequently, they were arrested and arraigned accused in the present case. Santosh @ Lubhya Chandilkar is involved in 22 cases. It is alleged that with the help

of the said accused, Sushil Mancharkar wanted to liquidate Kailash Kadam. Confession of accused Santosh @ Lubhya Chandilkar, Raju Mahadev Patre were recorded. Thereafter confession of Dhanraj Kamble, was recorded.

4 Learned advocate Mr.Sarda, for the applicant submitted that there is no evidence to show that the applicant is a member of crime syndicate headed by Santosh Chandilkar. In the past, one case was registered against accused, but, the said case has no connection with the gang leader. The applicant is not involved in any crime with the gang leader or any of the accused who were hired to liquidate rival of Sushil Mancharkar. The alleged role attributed to the applicant is that he was coordinating the appearance of the accused in the Court. There is no evidence to establish that the applicant was conspirator or had any knowledge about the conspiracy hatched by Sushil Mancharkar and others to liquidate Kailash Kadam. Sushil Mancharkar was granted bail by the learned Additional Sessions Judge, Pune. Prime role was attributed to him, as a person who was instrumental in arranging escape of the accused from the custody of police and as a conspirator to liquidate Kailash Kadam. The confessional statement of the accused Raju *alias* Kalya

Mahadeo Patre and Santosh *alias* Lubhya Chandilkar were recorded on 21st November, 2017, however, both these statements recorded under Section 18 of the MCOC Act, does not attribute any incriminating role to the applicant. The prosecution has heavily relying upon the confessional statement of co-accused Dhanaraj *alias* Dharma Das Kamble recorded on 23rd February, 2019. The said statement indicate that the applicant had handed over a bag to the said accused, which was containing three pistols and arms. However, while recording the said statement, there was no adherence to Section 18(4), 18(5), although, it was followed while recording the confessional statement of other co-accused. It is submitted that even this confessional statement does not indicate that the applicant was conspirator to liquidate Kailas Kadam or that he had knowledge about the conspiracy to liquidate Kailas Kadam. The applicant is in custody from 14th September, 2017.

5 Learned APP submitted that the offence is of serious nature. The applicant has played active role. He was the conspirator. The co-accused Sushil Mancharkar and the other accused had hatched the conspiracy. The applicant has participated into the act of aiding and abetting the offence under

Section 224 wherein the arrested accused escaped from the custody of the police. Confessional statement of Dhanaraj Kamble attribute role to the applicant. There is no material to indicate that the applicant is the member of crime syndicate headed by Sushil Chandilkar. At this stage, the contents of confessional statement of the co-accused cannot be discarded. Applicant was in contact with other accused on the date of incident. Statements of witnesses shows involvement of applicant. Applicant is involved in C.R.No.111 of 2012, registered with Paud police station under Sections 307, 324, 427, 143 and 149 of IPC. The applicant played vital role. He used to arrange/manage police party. He was in contact with accused No.10 Vijay Waghmare. Accused No.10 permitted the accused to use mobile phone provided to accused No.14, by applicant. Accused were permitted to go by private vehicle. The accused ran away from custody of Chandanshiv, Khade and Waghmare. To save themselves FIR was lodged with Bharati Vidyapeeth police station.

6 On perusal of the documents on record it can be seen that the case of the prosecution is that the escape of the co-accused was said to be managed with the aid of police. The applicant is allegedly coordinating the appearance of the accused

before the trial Court. The applicant was involved in providing meal to the police personal and the co-accused on the day of incident. Apparently, the applicant was involved in one case in the past, which has no connection with the accused in this case or the head of the gang. The applicant has not committed any offence with the head of the gang Sushil Chandilkar or any of the accused. The confessional statement of the head of gang Santosh Chandilkar was recorded on 21st November, 2017. He stated that he was detained at Yerawada prison along with Raju Patre and Santosh Jagtap. Accused Dharma Kamble was also in jail. Santosh Jagtap was driver of Sushil Mancharkar in the past. In 2015, Sushil Mancharkar had come to Yerawada jail. Santosh Jagtap, introduced Mancharkar to him and Raju Patre. They hatched conspiracy to kill Kailas Kadam. Mancharkar used to meet them. They were planning to kill Kailas Kadam. They were also planning their escape from jail. Dharma Kamble arranged pistols and rounds. On 10th April, 2017, they travelled by private vehicle after attending Court. Dharma Kamble joined them with bag. They used to meet Mancharkar. Santosh Chandilkar is gang leader. He has not stated that applicant is member of his gang and involved in any unlawful activities with him. He has not referred to his participation in escape or conspiracy. According to him,

conspiracy was hatched in jail. He has not attributed any overtact to the applicant. The confessional statement of Raju Patre who had also escaped from the police custody, do not attribute any role to the applicant. His statement was recorded on 21st November 2017. His version is similar. No role is attributed to applicant. After long gap statement of Dhanraj Kamble was recorded on 22nd February, 2019, in which it was stated that he was in jail at Yerawada prison. Mancherkar used to visit jail and meet Chandilkar, Raju Patre and Santosh Jagtap. Chandilkar had told him to come at Khadakwasla. Lubhya Chandilkar and Raju Patre introduced him to Suresh Zhende (applicant). Lubhya Chandilkar told him that applicant would give him bag which he should bring as per his directions. On 10th April, 2017, he went to Khadakwasla and applicant gave him bag containing three pistols and rounds. He joined Lubhya and others with bag. Then he referred to further acts including plan to kill Kailas Kadam. Assuming the confession of this accused to be true, it cannot be inferred that applicant was conspirator to kill Kailas Kadam. This confession was recorded after confession of Lubhya Chandilkar and Raju Patre. According to this accused, he was introduced to applicant by Lubhya Chandilkar and Raju Patre. However, confession of gang leader Chandilkar and Raju Patre do

not refer to such introduction or any other role to applicant. It is not the case of the prosecution that any arms were used in commission of crime. It is the case of the prosecution that Sushil Mancharkar has hatched conspiracy to liquidate Kailas Kadam. The plan was not effected hence Section 115 of IPC, was invoked. Taking the prosecution case as it is, it cannot be said that the applicant was party to the conspiracy to liquidate Kailas Kadam. The accused Sushil Mancharkar who wanted to liquidate his rival was granted bail. Learned counsel for applicant, on instructions, submitted that Mancharkar continues to be on bail. Apparently, bail was granted before invoking provisions of MCOC Act. Sachin Jadhav and Hamid Shaikh were granted bail by this Court vide order dated 10th October, 2019. The allegations against those accused were that they were also in Yerwada Central Prison with the other accused for some time, and, after their release, they had assisted the other accused in the crime. They has been planning with the other accused which resulted in the escape of the co-accused. This Court took into consideration, statements of witnesses and observed that there is no material to connect them with the present offence in question and it cannot be said that they were part of continuing unlawful activities in the organized crime syndicate headed by Chandilkar. The co-accused

Vinaykumar Kurmi was granted bail by the Special Court under the MCOC Act, vide order dated 3rd October, 2019. The role attributed to him that he had purchased pistols and bullets and handed over it over to the applicant. The learned Judge while granting bail had observed that except discovery statement of the co-accused under Section 27 of the Evidence Act, there is no material on record to show his direct involvement in the crime. Ganesh Raghunath Ahiwale was also granted bail by the Special Court under MCOC Act, vide order dated 26th November, 2019, the allegation against him were similar to that of co-accused Vinaykumar Kurmi. The learned Judge while allowing the application has observed that there was no material on record to show any role which have been played by him in commission of crime. The applicant is in custody from 14th September, 2017. Considering the aforesaid aspects, it cannot be said that he is member of crime syndicate headed by Santosh Chandilkar. The embargo under Section 21(4) of the MCOC Act, would not be an impediment to grant bail to the applicant.

:: ORDER ::

- (i) Bail Application No.153 of 2020, is allowed;
- (ii) Applicant is directed to be released on bail in

connection with C.R.No.352 of 2017, registered with Pimpri Chinchwad Police Station, Pune, (C.R.No.183 of 2017), which is subject matter of MCOC Special Case No.7 of 2018, pending before the Special Court under the MCOC Act at Pune, on executing P.R. Bond in the sum of Rs.50,000/-, with one or more local sureties in the like amount;

- (iii) Applicant shall attend Pimpri Chinchwad Police Station, Pune, once in three months on first Saturday of the month between 11:00 a.m. to 01:00 p.m., till further orders;
- (iv) Applicant shall not tamper the prosecution evidence and shall attend trial Court regularly on the date of hearing of the case, unless exempted by the Court;
- (v) Bail Application No.153 of 2020, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)