

Digitally signed
by RUPALI
RAJESH
WAKODIKAR
Date:
2021.09.28
14:04:39
+0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 597 OF 2020

Sachin Dattu Nadhe	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Sudeep Pasbola a/w Mr. Ayush Pasbola and Karl Rustomkhan i/b Rahul Arote for the Applicant.

Mr. A.A.Palkar, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 23rd SEPTEMBER, 2021

P.C. :

1. Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 531 of 2017 registered with the Pimpri Police Station, for the alleged offences punishable under Sections 307, 143, 147, 148, 149, 120B, 212, 506, 201 of the Indian Penal Code; Sections 3,4 and 25 of the Arms Act and Sections 3(1)(ii), 3(2), 3(3) and 3(4) of the MCOC Act.

3. Learned Counsel for the applicant seeks bail on the ground of parity. He submits that a similarly placed co-accused Vijay Nadhe as well as Bablu Pal have been released on bail by this Court and by the Sessions Court respectively. He submits that the observations made by this Court (Coram : Prakash D. Naik, J) whilst releasing Vijay Nadhe on bail would also apply to the case in hand. He submits that the CCTV footage recovered during the course of investigation, pursuant to which, panchanama was prepared, does not show the participation of the applicant in the alleged crime. He further submits that two of the co-accused i.e. Vicky Sutar and Rahul Vishwakarma in their statement under Section 18 of the MCOC Act have stated that accused No.11 Chetan Walke provided two scythes and two pistols to Bablu Pal and the applicant, who in turn, gave the weapons to Vicky Sutar, is contrary to the two confessional statements of other co-accused, which shows that it was Chetal Walke (Original Accused No.11) who provided the weapons to Vicky Sutar. He submits that having regard to the same, the applicant be released on bail.

4. Learned APP does not dispute the fact that the role of the applicant is similar to that of Vijay Nadhe and Bablu Pal.

5. Perused the papers. The incident in question had taken place

on 15th September, 2017. According to the complainant-Santosh Kurawat, on 21st November, 2010, his brother Santosh and others had murdered one Rakesh Ghule, pursuant to which, an offence was registered against them. Subsequently, the accused were released on bail. The complainant has stated that Sachin Nadhe was a close relative of deceased Rakesh Ghule and Shashikant Ghule. According to the complainant, his brother had also contested the elections in 2017, as an independent candidate and that Sachin Nadhe had also contested in the said election. It is alleged that the complainant's brother was being threatened not to contest the said election, however, despite the same, he contested. It is further alleged by the complainant that on 15th September, 2017, when Santosh and his friends Vijay Yadav and Nadeem Maniyar had visited a tea centre at Pimpri, he received a call from Vijay Yadav that there were an incident of firing on Santosh and that, he was taken to the hospital. Pursuant thereto, the complainant visited the hospital and noticed that his brother - Santosh had sustained injuries and was undergoing treatment. On inquiry, he learnt that while he was taking tea at the Om Shiv Tea Centre, Sachin Nadhe, Vicky Sutar, Vijay Nadhe and Avinash Nadhe had came there; that they were armed with pistol; that they were also accompanied by 4-5 persons; that the said persons had covered their faces with handkerchief and were armed with sickles. It is further alleged that Sachin, Vicky, Vijay and Avinash

fired at Santosh, as a result of which, he sustained serious injuries. It appears that during the course of investigation, the CCTV camera which captured the incident was taken into custody and a panchanama was prepared. The sequence of events have been captured in the CCTV camera i.e. events of 15th September, 2017 and noted in the panchanama. It appears that the applicant's presence nor participation is disclosed in the said panchanama. Infact, Vijay Nadhe – co-accused in the said case was released on bail, having regard to the said fact, that the CCTV camera (panchanama) falsifies the version of the witnesses inasmuch as, the CCTV camera did not show the presence or the participation of Vijay Nadhe in the crime. This Court (Coram : Prakash D. Naik, J.) whilst granting bail to Vijay Nadhe, has in para 4 of the order dated 8th November, 2019 observed as under;

“4. The most vital aspect of the matter is the panchanama recorded during the course of investigation by the investigating machinery on 21-9-2017. The sequence of events occurred on 15-9-2017 which were purportedly captured in CCTV camera, are depicted in said panchanama. The co-accused was interrogated and he was asked to identify the persons who were seen in that CCTV footage and participated in the crime. The detailed sequences have been provided in the said panchanama. It is noted that at 3.30 pm which is undisputedly the time of incident, some of the persons had entered into Om Shiv Tea Centre and fired at the injured person. It is pertinent to note that panchanama do not refer to the presence of applicant. Specific overt act is being attributed to other persons. Even presence of applicant has not been reflected in the place where the incident took place. Thus the prosecution is trying to establish the identity

of the assailants with the aid of panchanama recorded on 21-9-2017. Although identification of accused was through co-accused, the prosecution is relying on said documents to establish identity. The names of the persons who have fired at injured were specifically disclosed vide said panchanama, which was with regards to CCTV footage. The evidence of CCTV would bear importance. The said document falsifies the version of witnesses, as the CCTV footage recovered during the course of investigation did not refer to the presence or participation of applicant in the crime.”

6. The role of the applicant is similar to that of Vijay Nadhe and the same is not disputed by the learned APP. As far as, handing over weapons by the applicant and Bablu Pal to Vicky Sutar are concerned, there is a discrepancy in the confessional statement of the accused recorded under Section 18 of the MCOC Act. As noted earlier, Bablu Pal has been released on bail.

7. Considering the aforesaid facts and circumstances, a reasonable doubt arises, regarding the involvement of the applicant, and hence, the embargo under Section 21(4) of the MCOC Act would not apply. Accordingly, the application is allowed and the applicant is enlarged on bail on the following terms and conditions;

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount;
 - (ii) The applicant shall stay out of the jurisdiction of Pimpri Police Station till conclusion of the Trial;
 - (iii) The applicant shall inform his latest place of residence and mobile contact number, if any, soon after being released on bail and/or if there is any change of residence or mobile details, time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
 - (iv) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;
8. The application is allowed in the aforesaid terms and is accordingly disposed of.
9. 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.

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

REVATI MOHITE DERE, J.