

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

CRIMINAL BAIL APPLICATION NO. 694 OF 2020

Sameer Ashok Sanas

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. A.P. Mundargi Senior Advocate i/b Priyal G.Sarda, for
the applicant.

Ms. Pallavi N. Dabholkar, APP for the State/Respondent.

CORAM: SARANG V. KOTWAL, J.
DATE : 18th JUNE, 2021
(Through Video Conferencing)

P.C. :

1. The applicant is seeking his release on bail in connection with C.R.No. 267 of 2015 registered at Paud Police Station, Pune for the offences punishable under sections 302 and 120-B of the Indian Penal Code and under Sections 3(1)(i) (ii) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (in Short 'MCOC' Act). The applicant was arrested on 02/01/2016 and since then he is in custody. The investigation is over and

the charge-sheet is filed.

2. Heard Mr. A.P. Mundargi, learned senior counsel for the applicant and Ms. Pallavi Dabholkar, learned APP for the State.

3. The prosecution story is in respect of murder of one Vijay Mirge. According to the prosecution case, he was assaulted by sickle by Amar Sanas and the present applicant. Both the assailants were brothers.

4. The prosecution case is unfolded through statements of two eye witnesses namely Kishor Bangar and Mangesh Mirge. The motive for commission of this offence was that the deceased was assuming power in the locality and business of the applicant and his brothers Amar and Mayur was particularly affected. Similarly, applicant's brother Mayur wanted to contest the Grampanchayat election. The deceased had forced him to withdraw from election. Because of this, the applicant's

group had grudge against him and they wanted to eliminate him.

5. Shri Mundargi learned senior Counsel first of all submitted that the co-accused Mebin @ Mannu Ibrahim Omen, Akshay @ Dadya Surve, Mayur Sanas, Tushar Gogawale and Nilesh Marne are released on bail. Therefore, on principle of parity, the applicant also deserves` to be released on bail. He submitted that the applicant is not an accused in any of the previous offences committed by alleged gang leader Tushar Gogawale and therefore, the offence will not fall within the meaning of Organised Crime as defined under the Maharashtra Control of Organised Crime Act, 1999 (MCOC Act). He submitted that statements of witnesses are vague. Their supplementary statements are recorded after six months i.e. after application of MCOC Act and therefore, their supplementary statements are not believable. He submitted that for theory of conspiracy, charge-sheet contains statements of Mayur Salunkhe,

Abhishek Kavade and Ramesh Gawade. All these statements are vague and unbelievable. In any case, the persons who were supposedly present at the time when this conspiracy was hatched are all granted bail. Therefore, by applying principle of parity, the applicant be released on bail. He submitted that the eye witness Mangesh is a chance witness. He was cousin of the deceased and therefore it is not believable that he did not inform about the incident to anybody and he did not try to save his own cousin. He submitted that the other eye witness Kishor Bangar has not spoken about applicant's presence at the spot at the first instance and only in his supplementary statement he has stated about presence of another person. He submitted that the recovery at the instance of the present applicant of clothes and motor cycle is not really incriminating evidence against him. Shri Mundargi submitted that the applicant is in custody for over five years and that also should be taken into consideration.

6. Learned APP submitted that statements of eye witnesses are sufficient to show the involvement of the present applicant in the crime. She relied on confessional statement of Tushar Gogawale to contend that pursuant to conspiracy some steps were taken to procure the weapon though that particular fire arm was not actually used in the crime. She submitted that this offence is committed to exert their supremacy in the region and that is why the deceased was murdered. Therefore provisions of MCOC Act are properly applied.

7. I have considered these submissions. As far as direct evidence is concerned, there are two eye witnesses namely Kishor Bangar and Mayur Mirge. Kishor Bangar has stated that on 24/12/2015 at about mid night he was on duty as a watchman at gate No. 2 of Paranjape Scheme where the offence had taken place. He had seen the deceased Vijay Mirge driving his car in that area. He saw that Vijay Mirge's car turned towards Matalwadi. Shortly he saw Vijay came running towards the gate to

save his life. He was followed by one unknown person carrying big knife. He saw that there was scuffle between Vijay Mirge and that unknown person. The unknown person assaulted the deceased with weapon like sickle on his head. After giving blows the unknown person ran away from the spot. He sat on motor cycle and then went away. Because of this, this witness got scared and called his superiors and asked them to come to the spot. Others came there. In the meantime, a car came there. From the car Ankush Mirge and Mangesh Mirge got down. It is his specific case that though he knew the assailant, he did not name him because of fear for his life. At the time of giving his statement before the police on 24/12/2015, he gave the name of the assailant as Amar Sanas who is brother of the present applicant. Supplementary statement of this witness was recorded on 02/06/2016. In that statement he has additionally stated that when Amar was assaulting the deceased, this witness scared and tried to run from the spot. At that time, he saw one person coming towards Amar Sanas but

he did not watch him closely by turning back.

8. The other eye witness is more important. He is Mangesh Mirge. His statement is immediately recorded on 24/12/2015. He was returning home from Bhugaon. When he reached Paranjape Scheme gate No.2, he saw the applicant standing there. Applicant's younger brother Amar Sanas was giving blows on the head of the deceased. This witness got scared. He went ahead and stopped at some distance. He saw that car of the deceased had gone in a ditch. Amar Sanas came running and went away on his motor cycle. The present applicant also went away from the spot on his own motor cycle. After some time, he received phone call from his cousin Santosh Mirge. This witness then told Santosh about the incident as he had seen it. Santosh asked him to wait in front of gate No. 2. He came there. All of them went to the spot. They picked up Vijay Mirge and kept him in a car. Vijay was taken to Sahyadri hospital but he was declared dead. Statement of this witness is important

because it is recorded immediately on 24/12/2015. There was no scope for having deliberation to implicate the present applicant falsely. Shri Mudargi criticized his statement on the ground that he was a chance witness and that he did not try to go to the spot immediately after seeing the incident, to save the deceased.

9. However, this witness had explained that he had got scared. The main accused Amar had brutally assaulted the deceased and it was possible that because of fear he did not go to the spot immediately. At this stage, it is difficult to observe anything further in this behalf. However, at this stage, it is an important piece of evidence. It is a direct evidence against the present applicant. This witness has also stated that he had carried the deceased to the hospital. His presence at the spot immediately before the deceased was removed from the spot is established. Therefore, in that context his statement assumes importance. His statement shows that the applicant was very much present at the spot.

10. There is some addition in his statement recorded on 2/06/2016. In that supplementary statement he has added that the applicant also took sickle from Amar and gave blows on Vijay Mirge's head. His first statement dated 24/12/2015 clearly mentions presence of the applicant at the spot while the deceased was being assaulted by the other accused Amar Sanas.

11. As far as the evidence regarding conspiracy is concerned, there are statements of witnesses namely Mayur Salunkhe, Abhishek Kavade, Ramesh Gawade and Swapnil Sanas.

12. Mayur Salunkhe has stated that he had seen and heard the accused discussing necessity of eliminating Vijay Mirge. He has mentioned about the meeting which had taken place two and half months prior to the incident. He has also stated about another meeting that had taken place one and half month prior to the incident. The

present applicant was present with other accused and they were discussing as to how the deceased was an obstruction for their progress and there was necessity to eliminate him. Tushar @ Appa Gogawale had specifically stated that Vijay Mirge should be eliminated. Mayur Salunkhe's statement was recorded on 25/12/2015.

13. There is statement of Abhishekh Kavade which was also recorded on 25/12/2015. He has mentioned about a meeting which he had seen and heard on 14/12/2015. In that meeting the present applicant and others were discussing necessity of eliminating Vijay Mirge. This witness infact had told the deceased about this meeting. But the deceased was confident and therefore ignored his information.

14. The next witness for conspiracy was Ramesh Gawade. His statement was also recorded on 25/12/2015. He has also spoken about the meeting which he had seen and heard one month prior to the incident

where all these accused including the present applicant were plotting elimination of the deceased.

15. Swapnil Sanas's statement was also recorded on 25/12/2015. He has spoken about the meeting which he had seen and heard which had taken place about one and half month prior to the incident. All these statements are recorded on 25/12/2015. Presence of the at the meetings is specifically mentioned in all these statements.

16. Shri Mundargi submitted that the other accused who were also present when these meetings had taken place are already granted bail. Therefore on principle of parity this applicant deserves to be released on bail. However, there is one crucial difference between applicant's case and other accused's case. The evidence against the present applicant is not only about hatching conspiracy but as mentioned earlier, was about his presence at the spot at the time of incident, as mentioned

in statement of Mangesh Mirge. Material of conspiracy coupled with statement of Mangesh Mirge makes applicant's case more serious than the others who are granted bail. Therefore principle of parity will not be applicable in the case of the present applicant.

17. Apart from this evidence, there is evidence of recovery of blood stained clothes at the instance of the present applicant which he had concealed in the bushes. There were blood stains on the clothes. Though the CA report is not available, but the fact that the clothes were concealed by the applicant makes it an incriminating piece of evidence. There is also recovery of motor cycle at his instance.

18. The post mortem notes show that the deceased had suffered as many as 16 injuries. It was a brutal murder and cause of death was mentioned as "hemorrhage and traumatic shock due to chop injuries over head".

19. Therefore, though the applicant may not have had any common antecedent with gang leader Tushar, regarding the offence of murder itself, there is sufficient material against the present applicant. Therefore looking at the nature of the evidence against him and the manner in which the offence was committed, the applicant does not deserve to be released on bail.

20. The application is therefore rejected. However, taking into account the fact that the applicant is in custody since 02/01/2016, the trial is expedited. The learned trial Judge shall take steps to take up the trial for hearing as early as possible.

With these observations, the application is disposed of.

(SARANG V. KOTWAL, J.)