

NSC.

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

CRIMINAL BAIL APPLICATION NO.796 OF 2019

Vishal @ Gidya Nagu Gaikwad	...Applicant
Versus	
State of Maharashtra	...Respondent

Mr. Priyal G. Sarda, for the Applicant.

Mr. S. V. Gavand, A.P.P for the Respondent – State.

PSI – Patange, Pimpri Police Station, Pune, is present.

CORAM : REVATI MOHITE DERE, J.

DATE : 4th FEBRUARY, 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.183 of 2017 registered with the Bharati Vidyapeeth Police Station, Pune, for the alleged offences punishable under Sections 224 and 34 of the Indian Penal Code and subsequently transferred to Pimpri Police Station, Pune and renumbered as C.R. No.352 of 2017 for the alleged offences punishable under Sections 115 r/w 302, 511, 120, 212,

216, 219, 223, 224, 225, 120B, 34 of the Indian Penal Code; under Sections 3, 5, 25, 27, 35 of Arms Act. During the course of investigation Section 3(1)(ii), 3(2), 3(3), 3(4) and 24 of Maharashtra Control of Organized Crime Act ('M.C.O.C. Act') were invoked.

3. Learned Counsel for the applicant submits that there is no material to connect the applicant with the alleged offences. He submits that a perusal of Section 18 statement of co-accused – Santosh @ Luby Chandilkar (original accused No.1) reveals that the applicant had no knowledge about the accused No.1 and others plan to escape. He submits that the applicant was not even aware that there was a conspiracy hatched by all the co-accused to kill Kailash Kadam, an Ex-Corporator nor had the applicant conspired with the co-accused and helped them to escape from their custody. He submits that a perusal of the statement of the witness – Sudhakar Sasane shows that after the co-accused sat in the applicant's car and took his car for a ride, the applicant immediately informed the police on duty and asked them to send a wireless message to the police. He submits that out of the 8 cases lodged by the prosecution, the applicant has been acquitted in 6 cases. He submits that having regard to the fact that there is no material to connect the applicant with the alleged offences, the bar of Section 21 (4) of the M.C.O.C. Act, will not apply.

4. Learned APP has filed an affidavit of Rajaram Ramrao Patil, Assistant Commissioner of Police (Crime I), Pimpri-Chinchwad Commissionerate, for opposing the application. According to the learned APP, the applicant is a member of the organized crime syndicate and was well aware that the co-accused were going to abscond and that the applicant and the co-accused were planning to commit the murder of the Kailash Kadam, an Ex-Corporator.

5. Perused the papers. Original Accused No.1 – Santosh @ Luby Chandilkar, Original accused No.2 – Raju @ Kalya Patre and original accused No.15 – Santosh Jagtap were arrested in connection with C.R. No.14 of 2013, registered with the Khandala Police Station, for the alleged offences punishable under Sections 392, 34 of the Indian Penal Code and under Sections 3, 25 of the Arms Act. It is the prosecution case that the said accused were produced before the Khandala Court in connection with the said case on 10th April, 2017. It is alleged that while returning from Khandala Court to Yerwada Central Jail, the said accused in connivance with certain police officials escaped from the police vehicle. The incident is alleged to have taken place at about 7.30 p.m., somewhere opposite Morwadi Court at Pimpri. It is alleged by the prosecution that accused Nos.1 - Santosh @ Luby, 2 - Raju @ Kalya and 15 – Santosh Jagtap,

whilst proceeding to Yerwada Central Jail in a police vehicle i.e. Government vehicle bearing No. MH-12-AH-7949 stopped the said police vehicle near Morwadi Court, Pimpri. It is alleged that the vehicle was stopped, on the pretext of going to the toilet. It was alleged that the said accused sat in the applicant's car and fled in the said car. Pursuant thereto, a complaint was lodged by Sanjay Chandanshiv, Head Constable (now co-accused) on 11th April 2017, as against the said accused alleging offences punishable under Sections 224 and 34 of the Indian Penal Code. It was alleged in the said complaint that the accused got into a scuffle with the police and ran away from the custody. During the course of investigation, it transpired that the First Informant i.e. Head Constable, Sanjay Chandanshiv and other members of the police party were also involved in the said crime and that the police party taking the accused to jail were well aware of the plan and that the accused escaped with the connivance and help of the police party. According to the prosecution, a Swift Car bearing No.MH-14-EP-8823 belonging to the applicant, was used for fleeing from the custody of the police. Initially, the applicant was cited as a witness when the case was registered with the Bharati Vidyapeeth Police Station, however, when it transpired that the police party was also involved in the commission of the said offence, the applicant was also arrested in the said C.R. A perusal of the statement of original accused No.1 – Santosh @

Lubya Chandilkar recorded under Section 18 of the M.C.O.C. Act shows that the applicant had no knowledge of the accused's plan to escape, much less to murder Kailash Kadam. Admittedly, the applicant was not named in the FIR. The only evidence as against the applicant is that he came in a Swift Car near hotel Palange Biryani, where the accused stepped into his car and fled in the said car. A perusal of the statement of Sudhakar Sasane reveals that three accused sat in the applicant's car and left the said spot. The said witness has further stated that when the co-accused left in the applicant's car, the applicant informed the police about the same; that when the police were informed, they replied that the said accused were going to meet their relatives. The said witness - Sudhakar informed that the accused parents lived in another direction and that they have gone in another direction and they should inform the higher cops. The applicant is further alleged to have told the police that the said accused are not likely to return and they should send a wireless message, however, the police ignored the applicant. This being the only material *qua* the applicant, *prima facie* does not show the complicity of the applicant in the alleged crime. The material on record also *prima facie* does not show that the applicant had knowledge of the conspiracy/plan hatched by the co-accused along with the police or that the accused were planning to eliminate Kailash Kadam. As far as antecedents are concerned, out of the 8 cases, the applicant has been

acquitted in 6 cases. The applicant is in custody for about 3 ½ years. Having regard to the material on record *qua* the applicant, the bar of Section 21 (4) of the M.C.O.C. Act, will not apply.

6. 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. 30,000/- with one or two local sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Sunday of every month between 10:00 a.m. to 11:00 a.m. till the conclusion of the trial;
- (iii) The applicant shall inform his 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;
- (iv) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

(v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(vi) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

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.