

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1083 OF 2021
AND
INTERIM APPLICATION NO.1084 OF 2021
IN
CRIMINAL APPEAL NO.295 OF 2021

Ganesh Baliram Desai	..	Applicant
v/s.		
The State of Maharashtra	..	Respondent

....

Mr. A. K. Shukla for the Applicant.
Mrs. M. M. Deshmukh, APP for the Respondent.

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CORAM: NITIN JAMDAR &
G. A. SANAP, JJ.
DATE : 13 SEPTEMBER 2021.

P. C:-

These applications are preferred by Applicant-Accused No.4. Interim Application No.1083 of 2021 is for bail pending hearing of the Criminal Appeal and Interim Application No.1084 of 2021 is for suspension of sentence. The learned Counsel for the Applicant states that separate applications were not necessary.

2. The Appellant-Accused No.4 along with other accused faced trial for crimes punishable under Sections 302 read

with Section 34 and Section 120-B of Indian Penal Code 1860 and under Sections 4, 25 of Arms Act and under Sections 3(1)(i), 3(1)(ii), 3(2), 3(3) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999. The learned Special Judge, by judgment and order dated 7 November 2020, convicted the Applicant and other accused for the said offences.

3. The case of the prosecution is that there was an organized crime syndicate of the accused. On 14 March 2014 at 10.20 a.m., informant, the brother of deceased Sandeep received information that Sandeep was assaulted and was killed in front of a tea stall. PW-4-Sunil reported the incident to the police wherein he suspected that the accused persons were involved. During investigation police recorded the statement of PW-9 Rickshaw driver who happened to be near the tea stall and was witness to the incident. His name was not revealed on record by the order passed by the learned Special Judge. PW-7 was working in a tea stall owned by PW-20 in front of which the incident took place. They deposed that when the deceased Sandeep was near the tea stall, 3-4 persons assaulted him. During investigation, accused No.2-Suresh Narsayya Deshvani and accused No.3-Arvind Ashok Salvi gave confessional statements as per the provision of Section 18(1) of the Maharashtra Control of Organized Crime Act, 1999 in which they confessed to the crimes.

4. The learned Counsel for the Applicant submitted that none of the witnesses have identified the Applicant and they have only given description of the assailants. There is no reference to identification of the Applicant when the test identification parade was conducted. The learned Counsel submitted that even in the confessional statements given by accused Nos.2 and 3 nothing in respect of the Applicant is stated so as to connect the Applicant to the crime. Learned Counsel submitted that the Applicant is in custody since March 2014 and this is the case for bail since no identity of the assailant is established.

5. Learned APP opposed the application. Learned APP submitted that the reports of telephonic conversation between accused No.1 and accused No.4 reveal the conspiracy and establish the role of the Applicant and furthermore the blood group of the blood stains on the clothes of the Applicant and the deceased matches.

6. The case of prosecution is that there was organized crime syndicate of the accused persons of which the Applicant was a party. They conspired to commit murder of deceased Sandeep over a dispute as regard area of operation of the syndicate. Nothing is pointed out to us as to why the confessional statements under Section 18 of the Maharashtra Control of

Organized Crime Act, 1999 should be excluded from consideration for the purpose of this application. In these statements the involvement of the Applicant is clearly stated. Secondly the person working in tea stall and the rickshaw driver have stated that the incident suddenly took place and when they were called for test identification parade they were under fear. Their names were also not disclosed for the said reason. PW-4-Sunil, the brother of deceased has narrated the past incident and the enmity. The telephonic calls between the Accused establishes the conspiracy. Blood group of the blood stains on the clothes of the Applicant matches with that of the deceased. Considering the gravity of the offences, fear generated by the accused which is manifest from the deposition of the witnesses, the confessional statements and other evidence, we are not inclined to release the Applicant on bail. The Applications are rejected.

(G. A. SANAP, J.)

(NITIN JAMDAR, J.)

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