

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2002 OF 2021

SANTOSH DADU KHALSE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Shailesh Kharat, Advocate for the Applicant.

Mr.A.A.Palkar, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

RESERVED ON : 25th NOVEMBER 2021
PRONOUNCED ON : 9th DECEMBER 2021

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.942 of 2019 registered with Police Station Dehuroad, Pune, for offences punishable under Section 307, 326, 323, 504, 506, 34, 143, 147, 149 of the Indian Penal Code (IPC), under

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Section 4(27) of Indian Arms Act and under Section 3(1)(ii), 3(4) of the Maharashtra Control of Organized Crime Act (MCOC Act).

2 It is the case of prosecution that on 2nd August 2019, at about 12.30 p.m., when the informant along with his friend Vicky Vishwakarma had come near a mutton shop, accused Sandeep @ Alter Khalse and his brother Santosh Khalse along with their friend Buggi and Suresh Avchite were standing there. Applicant then called the informant and told that why he is intervening in the quarrel between them and one Dinesh. The prosecution alleges that a verbal altercation took place in which the abovenamed accused and applicant beat the informant and his friend Vicky Vishwakarma by hands. When the informant resisted, accused Buggi and Suresh Avchite picked up a sword and sickle from nearby mutton shop and gave it to applicant and accused Sandeep Khalse and then also started assaulting the informant. Being in fear, Vicky Vishwakarma started running away but accused Buggi chased him and assaulted him by means of a

sickle which landed on the hand of Vicky Vishwakarma. The informant, accordingly, lodged the report.

3 Mr. Shailesh Kharat, learned counsel for the applicant, submits that no specific role is attributed to the applicant and as also the weapon allegedly used by him. Co-accused Suresh Munna Avachite is already released on bail by the trial Court. Investigation is completed. No useful purpose would be served by keeping the applicant behind the bars. Hence, the application deserves to be allowed.

4 Mr. A. A. Palkar, learned APP, on the other hand, opposed the submissions and submitted that there is sufficient evidence on record. There being no merit in the application, the same is liable to be rejected.

5 Perused the investigation papers including the Affidavit-in-Reply filed by the learned APP. It is pertinent to note from the FIR that the co-accused, namely, Suresh Avachite who

along with accused Buggi allegedly had picked up sword and sickle from nearby mutton shop and then handed over the same to applicant and other accused, namely, Sandeep Khalse, has already been released on bail by the trial Court. Although in the FIR it is not specifically alleged that the applicant had given a blow of either sickle or sword on a particular part of the body but the statement recorded on 23rd June 2019 shows that the applicant and other accused had assaulted by means of sword and sickle on his head, arm and fingers of the right hand.

6 I have also gone through the statement of Aman @ Vicky Surendra Vishwakarma who on the date of incident was accompanying the informant. However, his statement nowhere shows that the informant was assaulted by the present applicant by means of any weapon.

7 I have also gone through the statement of Kiran Gautam Kamble. He has a different version to offer. According to him, accused Buggi Shaikh brought sword and sickle from the

mutton shop. This is in sharp contradiction to the claim of informant himself.

8 I have also perused the injury certificate of Aman @ Vicky Vishwakarma who sustained injury on the vital part of the body but from the statement and FIR it is clear that the applicant was not the author of the said injury.

9 Although the antecedents of the applicant are given in the Affidavit-in-Reply, but since his involvement in the present crime is not satisfactorily established by cogent and convincing evidence, the bar of Section 21(4) of the MCOC Act will not come in his way.

10 For the aforesaid reasons, I am inclined to allow the application. Hence, I pass the following order :

ORDER

- (i) Applicant – Santosh Dadu Khalse shall be released on bail in Crime No.942 of 2019 registered with Police Station

Dehuroad, Pune, on his executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.

- (ii) The applicant shall not tamper with prosecution evidence.
- (iii) The applicant shall attend the Court proceedings regularly.
- (iv) The applicant shall not enter Pune District except for attending the Court dates till conclusion of the trial.
- (v) Bail before the trial Court.
- (vi) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vii) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.
- (viii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)