

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2400 OF 2021

GULAB UTTAM MANE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

WITH

ANTICIPATORY BAIL APPLICATION NO.2409 OF 2021

VINOD SHIVAJI MANE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Shekhar Ingawale, Advocate for the Applicant in ABA No.2400 of 2021.

Dr.Yug Mohit Choudhari i/b. Mr.Priyal G. Sarda, Advocate for the Applicant in ABA No.2409 of 2021.

Smt. P. P. Shinde, APP for the Respondent – State.

Mr.Ranjeet Patil, Advocate for the Intervenor.

CORAM : V. G. BISHT, J.

**RESERVED ON : 17th DECEMBER 2021
PRONOUNCED ON : 20th DECEMBER 2021**

P.C. :

1 The present applications have been moved by the applicants under Section 438 of the Code of Criminal Procedure apprehending arrest under Section 386, 387, 302, 120B read with 34 of the Indian Penal Code (IPC) registered vide Crime No.779 of 2018 with Police Station Baramati City, Pune.

2 Informant is the wife of Krushna @ Nana Mahadev Jadhav (deceased). The prosecution case is that the applicants along with other accused used to harass the deceased and demand extortion amount in the sum of Rs.30 lacs which deceased had refused to part with. Keeping this grudge in mind, it is alleged that on 5th November 2018, the applicants along with other accused assaulted the deceased by means of a sharp weapon and caused his death. Informant accordingly lodged First Information Report (FIR).

3 Mr. Shekhar Ingawale, learned counsel for the applicant in ABA No.2400 of 2021 submits that there is no sanction under the provisions of Maharashtra Control of Organized Crimes Act (MCOC Act) against the applicant. Infact, the material on record would suggest that it were juveniles who committed the murder of the deceased. The learned counsel also invited my attention to the confessional statement of co-accused Kundan @ Bala Dattatray Jadhav and pointed out that even his statement does not reveal the participation of the applicant in the crime. Rather, his statement reveals name of assailants who actually participated. Moreover, he also has been enlarged on bail. In such circumstances, the present applicant is also entitled to be given the benefit of pre-arrest bail.

4 Dr. Yug Mohit Choudhari, learned counsel for the Applicant in ABA No.2409 of 2021, submits that there is no sanction against the applicant about the applicability of provisions of MCOC Act. The only allegation against the applicant is that he was one of the conspirators. According to the

learned counsel although the learned APP has given the antecedents in the Affidavit-in-Reply, namely, involvement of the applicant in Baramati City Police Station C.R.No.275 of 2011 under Section 302 of the IPC, but the applicant has already been acquitted in the said crime which is apparent from their own documents at page no.609. Investigation is over. Having regard to the nature of accusation, the applicant deserves to be protected by granting pre-arrest bail, argued learned counsel.

5 Smt.PP.Shinde, learned APP, assisted by Mr.Ranjit Patil, learned counsel for the intervenor, submits that applicants were absconding since beginning and then invited my attention to statement of prosecution witnesses, namely, Sikander Fakruddin Shaikh and Vikrant Krushna Jadhav to prove the angle of conspiracy. There being no merit in the applications, the same are liable to be rejected, argued the learned APP.

6 I have gone through the investigation papers. Admittedly, there is no sanction against the applicants under the

relevant provision of MCOC Act. I have also gone through the orders passed by this Court (Coram : Sandeep K. Shinde, J.) dated 25th February 2021 in Bail Application No.2811 of 2019 wherein the Court had an occasion to observe that the actual assailants were juveniles in conflict with law and the gang leader, namely, Dinesh had successfully executed the conspiracy through the juveniles in conflict with law. I have also gone through the statement of co-accused Kundan recorded by Additional Superintendent of Police Camp, Umraj and his statement also shows that there were three juveniles in conflict with law who actually participated. This co-accused Kundan nowhere takes the name of applicants. Interestingly, this co-accused Kundan is also released on bail by this Court (Coram : Prakash D. Naik, J.) on 27th September 2021.

7 I have also gone through the statement of Sikander Fakruddin Shaikh and Vikrant Krushna Jadhav as pointed out by the learned APP during the course of submissions. Their statements only show the name of Dinesh Wayse, Ganesh Mane

and Lokesh Mane. As far as the alleged conspiracy is concerned, even otherwise, prima facie, the role of applicants in the alleged conspiracy is not satisfactorily established. That will be a matter of trial.

8 The learned APP has already given various antecedents at paragraph 5 of the Affidavit-in-Reply. However, according to learned counsel for the applicant, as far as antecedent (i) and (iii) are concerned, the applicant Vinod Mane has been acquitted. As far as antecedent (ii) which is C.R.No.233 of 2020 is concerned, the same is not against the applicant Vinod Mane and this is not disputed by the learned APP. Even according to the Affidavit-in-Reply, NCR.No.365 of 2019 under Section 504 and 506 of the IPC is filed against applicant Gulab Mane but again according to learned counsel, this pertains to some unknown person. The learned counsel has also filed on record copy of the said N.C. which supports his statement that the said N.C. is against an unknown person.

9 As far as the applicant in ABA No.2409 of 2021 is concerned, again there is no prima facie evidence about the actual involvement of the applicant in the alleged offence. I have already commented on the aspect of criminal conspiracy. Only thing now remains is the criminal antecedents. The Affidavit-in-Reply shows that the first antecedent is C.R.No.275 of 2011. But the prosecution's own document at page 609 shows that the applicant Vinod Mane has been acquitted in C.R.No.275 of 2011.

10 Having regard to the material on record, in my considered opinion, the applicants have made out a case for protection under Section 438 of the Cr.P.C. Hence, I pass the following order :

ORDER

- 1 The applications are allowed.

- 2 In the event of arrest of Gulab Uttam Mane (ABA No.2400 of 2021) and Vinod Shivaji Mane (ABA No.2409 of 2021) in Crime No.779 of 2018 registered with Police Station

Baramati City, Pune, for offences punishable under Sections 386, 387, 302, 120B read with 34 of the Indian Penal Code (IPC), the applicants be released on bail on executing PR.Bond in sum of Rs.25,000/- each with 1 or 2 surety/s in like amount by each of them.

- 3 The applicants shall attend Police Station Baramati City, Pune, as and when called by the Investigating Officer.
- 4 The applicants shall not tamper the prosecution evidence.
- 5 The applications stands disposed off accordingly.

(V. G. BISHT, J.)

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