

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 3019 OF 2021**

Gokul Kashinath Avhad	...	Applicant
Versus		
State of Maharashtra	...	Respondent

Mr. Amey Deshpande, for the Applicant.
Smt. P. P. Shinde, APP for the State-Respondent.
Mr. Akshay Bankapur, for the Intervenor.
Mr. Vijay Kharat, DCP, Zone-II, Nashik present.

CORAM : V. G. BISHT, J.

**RESERVED ON : 20th December, 2021.
PRONOUNCED ON : 22nd December, 2021.**

PC:

The applicant is seeking Anticipatory Bail in connection with C.R. No.37 of 2021 registered with Gangapur Police Station, District- Nashik, for the offences punishable under Sections 302, 120B, 201, 115, 109, 419, 420, 465, 467, 468, 471 r/w 34 of the Indian Penal Code and Sections 4 and 25 of the Arms Act along with Section 3(1)(i)(ii), 3(2), 3(4), 3(5) of Maharashtra Control of Organized Crime Act, 1999 (MCOC Act).

2 It is the case of prosecution that informant owns ancestral agricultural land at Anandwali. Deceased Ramesh Valu Mandlik was informant's father. Deceased's cousin nephew, namely, accused Sachin Trambak Mandlik, Jagdish Trambak Mandlik, Akshay @ Atul Jairam Mandlik, Smt. Mukta Eknath Motkari, and Bhushan Bhimraj Motkari were having quarrel since 2014 in respect of agricultural land. The deceased had filed various private complaints. The deceased had also filed complaint in respect of forged documents pertaining to the said agricultural land prepared by above-said accused.

3 According to prosecution, on 17/02/2021 when the deceased had gone to agricultural land for the purpose of irrigation, at about 5.45 p.m. the neighbouring land holder, namely, Vikram Prajapati rang him and informed that the deceased had been injured on his neck and he and others are taking the deceased to Siddhivinayak Hospital. The informant rushed to the hospital. From the said hospital he was referred to Civil Hospital where the deceased was declared dead.

4 Mr. Deshpande, learned Counsel for the applicant, submits that initially the applicant was not arrayed as an accused but later on as it was found that the applicant had acted as an attested witness to an

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agreement, he came to be arrayed as an accused. According to learned Counsel, he had nothing to do with the offence in question and has been implicated merely because he was witness to the document entered into between some of the accused. Although, the prosecution has applied provisions of MCOC Act but as against him no such permission is granted. The applicant is ready to co-operate. In such circumstances, the applicant needs to be given the benefit of Section 438 of the Code of Criminal Procedure, urged learned Counsel.

5 Smt.Shinde, learned APP, assisted by learned Counsel for the intervenor, also invited my attention to the confessional statement by submitting that the applicant has been absconding since date of commission of offence. Moreover, there is confessional statement of co-accused, namely, Nitesh Yugal Singh, which also points out the involvement of the applicant. The investigation is in progress. In such circumstances, application deserves to be rejected.

6 Perused the FIR and investigation papers.

7 At the time of filing of the FIR admittedly the name and role of the

applicant was nowhere mentioned. According to the prosecution, the applicant acted as an attesting witness on a sale-deed in respect of Survey No.64/1/1 admeasuring 10.66 R which belong to the deceased. It is also alleged in the FIR by the informant that the forged sale-deed was prepared in respect of land belonging to the informant. That sale-deed is filed on record and admittedly signature of applicant is there as an attesting witness. However, I may point out that there is no direct or indirect evidence in respect of involvement of the applicant, as far as the offence in question is concerned.

8 Learned APP although relied upon the confessional statement of co-accused Nitesh Yugal Singh under the provisions of MCOC Act, but in my view, since the prosecution of the applicant under the relevant provisions of MCOC Act has been refused by the Competent Authority, the said confessional statement will not further the case of prosecution as against the applicant. Even if it is applicable for the sake of argument then the said statement does not throw any light about the role played by the applicant in the alleged assault.

9 For the aforesaid reasons, I hold that the applicant has made out a case for anticipatory bail. Hence, the following order.

ORDER

(i) In the event of arrest of the applicant - Gokul Kashinath Avhad in C.R. No.37 of 2021 registered with Gangapur Police Station, District-Nashik, for the offences punishable under Sections 302, 120B, 201, 115, 109, 419, 420, 465, 467, 468, 471 r/w 34 of the Indian Penal Code and Sections 4 and 25 of the Arms Act along with Section 3(1)(i)(ii), 3(2), 3(4), 3(5) of Maharashtra Control of Organized Crime Act, 1999 (MCOC Act), the applicant be enlarged on bail on his furnishing PR & SB in the sum of Rs.25,000/- with one or two sureties.

(ii) The applicant shall not tamper with the prosecution evidence.

(iii) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V. G. BISHT, J.)

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PATIL

Date: 2021.12.22
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