

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

**BAIL APPLICATION NO.3015 OF 2019**

|                                |               |
|--------------------------------|---------------|
| Kundan @ Bala Dattatray Jadhav | .. Applicant  |
| Versus                         |               |
| The State of Maharashtra       | .. Respondent |

**WITH  
INTERIM APPLICATION NO.895 OF 2021**

|                          |               |
|--------------------------|---------------|
| Smt.Sapna Krishna Jadhav | .. Intervenor |
|--------------------------|---------------|

**In the matter between :**

|                                |               |
|--------------------------------|---------------|
| Kundan @ Bala Dattatray Jadhav | .. Applicant  |
| Versus                         |               |
| The State of Maharashtra       | .. Respondent |

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Mr.Rahul K. Dhaygude, Advocate for the Applicant.

Mr.Rajesh More, Advocate for the intervenor.

Ms.Veera Shinde, APP, for Respondent – State.

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**CORAM : PRAKASH D. NAIK, J.**

**DATED : SEPTEMBER 27, 2021.**

**P.C. :**

Pursuant to administrative directions, the application has been listed before this Court. The applicant was arrested on 6<sup>th</sup> November, 2018 in connection with C.R. No. 779 of 2018 registered with Baramati City Police Station for offences under Sections 302, 386, 387, 120-B read with Section 34 of Indian

Penal Code (for short "IPC"). Subsequently, provisions of Section 3(1)(i)(ii), 3(2), 3(4) of The Maharashtra Control of Organised Crime Act, 1999 ("MCOC Act", for short), were invoked.

2           The case of the prosecution is that the First Information Report (for short 'FIR') is lodged by the wife of the deceased. In the Year 2000, Dinesh Raosaheb Wayase was driving auto rickshaw. He approached husband of the complainant for work. At that time the husband of the complainant gave him domestic work. Dinesh Wayase committed theft, hence he was removed by the husband of complainant. Hence, Dinesh Wayase used to quarrel with the complainant and her husband. Thereafter, Dinesh Wayase obtained money from Ruturaj Kale for running business, however he could not repay the said amount to Ruturaj Kale. Hence Ruturaj Kale demanded his money from Dinesh Wayase. Hence Dinesh Wayase alongwith his associates and relatives namely Vinod Mane, Ganesh Vitthal Mane, Lokesh Parshuram Mane, Sandip Mane, Anil S. Mane, Sunil Mane, Gulab U. Mane attacked Ruturaj Kale and for that reason they were in jail. While they were in jail, it was their grievance that complainant's husband did not help them for releasing them from jail. On 9<sup>th</sup> November, 2017, they burnt complainant's four

wheeler. Complaint was lodged at Baramati City Police Station. The Police arrested Amin Inamdar in the said incident. Amin Inamdar disclosed names of Dinesh Wayase, Ganesh Mane and Lokesh Mane in the said crime. Thereafter, Lokesh Mane and Bitya alias Sachin Ramesh Jadhav forcibly took the husband of the complainant to meet Ganesh Mane and Dinesh Wayase. After one hour the husband of the complainant was dropped by them at his residence. That time, complainant's husband told her that he was taken near gymkhana of Vinod Mane at Tandulwadi Road, and Vinod Mane, Dinesh Wayase, Ganesh Mane, Anil Mane, Sunil Mane, Prem Wayase, Avinash Jadhav, Sandip Mane, Ravi Makar, Motha Bitya, Gulab Uttam Mane had demanded extortion amount of Rs.1,00,000/-, from him and they threatened him that if he fails to give said extortion amount, he would be killed. After 2-3 days, the deceased gave Rs.1,00,000/- to them. However, due to fear they did not lodge any complaint. Thereafter, the aforesaid persons used to demand money from him. Since they were demanding money from time to time, community meeting was held and in the said meeting, Dinesh Wayase in the presence of community people, had stated that they wanted to assault the husband of the complainant instead of assaulting Ruturaj Kale. One Vaishnavi @ Cheemi Jadhav was instigated by Vinod Mane

and others to register offence of rape and under provisions of POCSO against the husband of complainant. Vaishnavi had called Kedar Jadhav and informed him to intimate complainant's husband to give money, or she would lodge rape case against him. Vaishnavi Cheemi lodged FIR alleging rape and offences under POCSO Act against complainant's husband. It is also case of the complainant that after registration of the said crime, they had also demanded Rs.30,00,000/- from the husband of complainant. On 26<sup>th</sup> October, 2018 Anil Mane had threatened them of dire consequences. On 5<sup>th</sup> November, 2018 at about 12.30 p.m., informant and her husband went to Samata Nagari Patsanstha. Thereafter, deceased dropped complainant at home and again went to Baramati Hospital, where deceased was assaulted by means of sharp edged weapons on neck and face. Deceased was lying in pool of blood and after reaching on the spot, the informant and her son took the deceased to Silver Jubilee Hospital, where doctor declared him dead. On the basis of the complaint lodged by the complainant vide C.R. No.779 of 2018 under Section 120-B, 386, 387, 302, 34 of IPC was registered at Baramati City Police Station, Pune Rural, Dist. Pune on 5<sup>th</sup> November, 2018 against Dinesh Wayase, Vinod S. Mane, Ganesh V. Mane, Anil S. Mane, Sunil S. Mane, Prem. D. Wayase, Avinash

Jadhav, Sandip Mane, Cheemi alias Vaishnavi A. Jadhav, Ravi Maker, Sachin R. Jadhav, Lokesh Parshuram alias Dattatraya Mane and Gulab U. Mane and investigation had commenced.

3           The applicant was arrested on 6<sup>th</sup> November, 2018. He preferred application for bail before the Special Court constituted under M.C.O.C. Act. Application was rejected by order dated 10<sup>th</sup> October, 2019.

4           Learned counsel for the applicant submitted that the applicant has not been named in the FIR. He had no enmity with the victim. There is no evidence of conspiracy against the applicant. He is not concerned with the past history with the victim. There was dispute between the victim and the co-accused. Most of the witnesses have not stated that the applicant is involved in demanding money from victim. There is no evidence that he is member of crime syndicate. He is not concerned with C.R.No.233 of 2010 and C.R.No.271 of 2011. The applicant has no connection with the assailants. The confession of the applicant was recorded under duress. It was not verified whether the applicant was forced to give confession. The co-accused Akshay Bhosale is granted bail by this Court by order dated 30<sup>th</sup> July,

2021.

5            Learned APP and learned advocate for the complainant submitted that there is sufficient evidence to show involvement of the applicant. M.C.O.C. provisions are applied against the applicant. Blood stained clothes of the juvenile were recovered from the applicant. He is conspirator in the crime. His role as a conspirator is appearing in his confessional statement. The applicant did not retract his confession before the Magistrate. It was retracted subsequently through jail. Witness Prem Jadhav as referred to involvement of the applicant as a person amongst others while demanding money from the victim. The accused had hatched conspiracy and brutally assaulted the deceased. The offence is of serious nature. The prosecution has filed affidavit opposing application. List of cases registered against gang leader are mentioned in the affidavit. Statements of witnesses were recorded under Section 164 of Cr.P.C. It is stated that the applicant is involved in two cases registered with Baramati City Police Station vide C.R.No.84 of 2017 and 290 of 2019.

6            The applicant is arrested on 6<sup>th</sup> November, 2018. Since then he is in custody. FIR was registered on 5<sup>th</sup> November,

2019, by the wife of the deceased. The applicant has not been named in the FIR. The co-accused are named in the FIR. Applicant has no connection with the said incident between the two sides. While rejecting the application for bail, the learned Special Judge has observed that the applicant had hatched conspiracy, however, there is no evidence to support the charge. The inference drawn on the basis of statements of co-accused. The order also indicate that the confession was retracted by the applicant through jail. The Special Judge has also observed that assuming for the sake of argument that the provisions of M.C.O.C. Act are not applicable, there is strong evidence against the applicant showing his involvement. Statement of Kedar Jadhav was recorded on 6<sup>th</sup> November, 2018. The said witness has not examined as the person who has demanded money from the deceased. Statements of the said witness was recorded on 7<sup>th</sup> November, 2018, wherein he has named the applicant as a person who was present amongst others while demanding extortion amount. Statement of Prem Jadhav was recorded on 7<sup>th</sup> November, 2018. Applicant's involvement is not shown in the previous incident as the person shown amongst the other persons while demanding Rs.30,00,000/-. Statements of two witnesses were recorded under Section 164 of Cr.P.C. The statements does

not show involvement of applicant. Subsequently, statement of witness Vijay Pote was recorded, wherein he has referred to the name of the applicant as a person who used to be with co-accused. Confession of the applicant was recorded under Section 18 of the M.C.O.C. Act. The version is not supported by cogent evidence. Undisputedly, the applicant was not present amongst the assailants. Taking into consideration the nature of evidence, the restrictions under Section 21(4) of the M.C.O.C. Act, could not be impediment to grant bail to the applicant.

**:: ORDER ::**

- (i) Bail Application is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.779 of 2018 registered with Baramati City Police Station, on executing PR bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report Baramati City Police Station once in three months on first Saturday of the month between 11:00 a.m. and 1:00 p.m., till further orders;

- (iv) The applicant is permitted to furnish provisional cash bail in the sum of Rs.50,000/-, for a period of eight weeks in lieu of sureties;
- (v) The applicant shall not tamper with evidence;
- (vi) Interim Application is disposed of.

**(PRAKASH D. NAIK, J.)**