

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

**BAIL APPLICATION NO. 3465 OF 2019
ALONG WITH
INTERIM APPLICATION NO. 896 OF 2021**

Akshay Sanjay Bhosale ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Nagesh Y. Chavan, Advocate for the Applicant in B.A. No. 3465 of 2019.

Mr. Rajesh More, Advocate for the applicant in Interim Application.

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

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CORAM : PRAKASH D. NAIK, J.

DATE : 30th JULY, 2021

PER COURT:

1. The applicant was arrested on 10th 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 r/w Section 34 of Indian Penal Code (for short “IPC”).

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. Due to that reason, Dinesh Wayase used to quarrel with the complainant and her husband. Thereafter, Dinesh Wayase obtained money from Raturaj Kale for running business, however he could not repay the said amount to Raturaj Kale. Hence Raturaj 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 Raturaj Kale and for that reason they were in jail. While they were in jail, complainant's husband did not help them for releasing them from jail, hence, on 9th November, 2017, they burnt complainant's four wheeler. Complaint was lodged at Baramati City Police Station. The Police arrested one Amin Inamdar in the said incident. Amin Inamdar disclosed the names of Dinesh Wayase, Ganesh Mane and Lokesh Mane in the said crime. After some days, 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 Lakh 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 Lakh 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 front 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 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 Lakhs from the husband of complainant. On 26th October, 2018 Anil Mane had threatened them of dire consequences. On 5th 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 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 5th 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 was commenced.

3. The applicant was arrested on 10th November, 2018. The applicant preferred application for bail before Sessions Court. Application was rejected by order dated 17th August, 2019.

4. Learned counsel for the applicant submitted that there is no evidence to show the involvement of the applicant in the crime. Undisputedly, the applicant was not alleged to be the

assailant. There is no evidence to show that the applicant is conspirator. The involvement of the applicant is allegedly shown to be a person present with the other accused when the amount of Rs.30 Lakhs were demanded from the deceased. It is submitted that statements of witnesses assigning the said role were recorded after statement of the arrested accused was recorded, who has allegedly referred to presence of the applicant. It is submitted that the statement of the Pandurang Wayase was recorded on 6th November, 2018. He is the co-accused in this case. Statement of Kedar Jadhav was recorded on 6th November, 2018. He has referred to the incident of demand of Rs.30 Lakhs. However, the involvement of the applicant is not disclosed. Supplementary statement of Kedar Jadhav was recorded on 7th November, 2018, wherein it is stated that at the time of demand of extortion amount of Rs.30 Lakhs, the applicant was present. Statement of Prem Jadhav was recorded on 7th November, 2018 and Vikrant Jadhav on 11th July, 2018. Although the provisions of MCOC Act were invoked in this case, the same were not applied to applicant.

5. Learned APP submitted that the accused had conspired to commit the offence. There are several circumstances to show the involvement of the applicant. She relied upon the statement of

Kedar Jadhav, Prem Jadhav and Vikrant Jadhav. There was conspiracy hatched by the accused. There was demand of amount of Rs.30 Lakhs in the presence of the applicant. Two other cases were registered against the applicant in the past.

6. Learned counsel for the complainant Mr. Rajesh More submitted that the statements of witnesses as stated above refers to involvement of the applicant. He pointed out order passed by the co-ordinate bench rejecting the application of co-accused Anil Mane and the observations made therein with regards to the conspiracy and the inferences to be drawn while dealing with the charge of conspiracy.

7. I have perused the statements on record. The applicant has not been named in the FIR. The complainant has given background about past incidents involving Dinesh Wayase and his associates. No role is attributed to applicant. The applicant is not even named in FIR. She has referred to incident of demand of Rs.30 Lakhs by several persons, threats of false implication in rape and POCSO case. However, involvement of applicant is not reflected. FIR was lodged against other accused. The applicant is not the person amongst assailants, who assaulted deceased Krishna Jadhav. Statement of Kedar Jadhav was recorded on 6th November,

2018. He has given details of incidents which had occurred prior to the assault upon the victim. He has referred to the incident of demand of the amount Rs.30 Lakhs. Names of all the persons were present at that time are reflected in the statement except the applicant. Surprisingly, charge-sheet includes statements of accused. The co-accused Dinesh @ Pandurang Wayase was arrested and during his interrogation he has allegedly disclosed the name of the applicant as one of the person, who was party to conspiracy. The statement is obviously not admissible in evidence. There is no evidence to show that applicant is one of the conspirator to kill deceased. Supplementary statement of Kedar Jadhav was recorded on 7th November, 2018, wherein he stated that applicant was present with other accused, when demand of Rs.30 Lakhs was made with deceased. Statement of Sikandar Shaikh was recorded. He has not referred to involvement of applicant. Thereafter, statement of Vijay Jadhav, Prem Jadhav etc. were recorded in similar manner. Apart from there statements, there is no evidence to show complicity of applicant in the crime. Provisions of MCOC Act were not invoked against applicant. He is in custody from 10th November, 2018. Further detention of the applicant is not necessary. Case for grant of bail is made out.

8. Hence, I pass the following order :

ORDER

- (i) Criminal Bail Application No. 3465 of 2019 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 779 of 2018 registered with Baramati City Police Station, Dist. Pune, on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report concerned Police Station once in three months on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;
- (iv) The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of surety.
- (v) The applicant shall not tamper with the evidence.
- (vi) Bail Application as well Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)