

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3536 of 2019

Monty @ Sanket Jagdish Nanekar .. Applicant
Versus
The State of Maharashtra .. Respondent

WITH
INTERIM APPLICATION NO. 874 OF 2020

Sandeep Balasaheb Shelke .. Intervenor
(Orig.Complainant)

In the matter between
Monty @ Sanket Jagdish Nanekar .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr. Vikas B. Shivarkar for the applicant.
Mrs.M.M. Deshmukh, APP for the State.
Mr.Ashwin Shete with Mr.Abhay Dhadiwal, Mr.Santosh Avhad
and Anand Lalwani i/b Jayakar & Partners for the intervenor/
original complainant.

CORAM: BHARATI DANGRE, J.
DATED : 23rd APRIL 2021

P.C:-

1 Intervention Application No. 874 of 2020 is filed by
the complainant seeking permission to intervene in the matter.

2 Heard Mr.Ashwin Shete, learned counsel for the intervenor and perused the charge-sheet in order to ascertain the material indicting the applicant in the present C.R.

3 Intervention Application is allowed. Counsel for Intervenor is permitted to advance his submissions in aid of the complainant opposing the application for grant of bail.

4 The present application is filed by the applicant who came to be arraigned as Accused no.20 in C.R. No.332 of 2016 registered at Talegaon Dabhade police station for the offences punishable under Section 302, 395, 143, 147, 148, 149, 120-B of the IPC and Section 3 and 4 read with Section 24 and 25 of the Arms Act. It is in the same C.R the provisions of the MCOCA were invoked and the applicant came to be charge-sheeted under the aforesaid sections of IPC and Section 3(1) (ii) and Section 3(4) of the MCOCA 1999.

5 The complaint which resulted into the said C.R being registered is filed by one Sandeep Shelke on 16th October 2016 with Talegaon Dabhade police station alleging that his family was at loggerheads with one Shyam Dabhade and his brother Bunty Dabhade along with his associates and in past, Shyam Dabhade had entered into his office and had assaulted his brother Sachin by means of a sword. He referred to an incident dated 16th

October 2016 when his brother Sachin had left the house in the morning at about 9.20 a.m. At about 10.45 am, when the complainant was passing through Khange Petrol Pump, he noticed Mercedes car of his brother, Sachin and saw about 10 to 15 persons assaulting him. When he proceeded towards his brother to rescue him, he heard a shot being fired at him and by the time he reached the spot, the assailants fled away, leaving his brother in a pool of blood. He was later carried to the hospital where he succumbed to the injuries.

6 In the backdrop of the complaint being lodged to the aforesaid effect, the submission of the learned counsel Mr.Vikas Shivarkar is that the applicant is not named in the FIR as one of the assailant, though the complainant has specifically named 11 accused persons and alleged that they were accompanied by four to five other persons who had assaulted his brother by means of scythes and other sharp weapons, and subsequently, fired at him. The submission is, the applicant is not named as an assailant and his name surfaced only on 4th November 2016 in one of the remand report, much after lodging of the FIR, reporting of an incident dated 16th October 2016. The submission of the learned counsel Shri Shivarkar is to the effect that the Investigating Agency was in the process of citing him as a witness to the incident but he submit that suddenly there was change of mind and in absence of any concrete material, he is arraigned as an

accused and came to be arrested on 17th March 2017. On completion of investigation, the charge-sheet is filed, but according to the learned counsel, it lack any concrete material to indict him in the said crime and particularly, under the provisions of the MCOCA as the material compiled in the charge-sheet fall short of he being a Member of an Organized Crime Syndicate and there is no commonality established in the charge-sheet which would be sufficient to sustain his conviction under the provisions of MCOCA. In absence of any recovery of any incriminating material or article, the learned counsel would submit that he deserve to be released on bail.

7 Learned counsel Mrs.Deshmukh concede to the position that the present applicant is not named in the FIR but she submit that he is not named since he was not one of the assailant but relying on the material contained in the charge-sheet, her submission is that he had actively participated in the meeting where a conspiracy was hatched to murder the deceased and according to her, the material would clearly implicate him in the relevant offence with the aid of Section 120-B of IPC.

8 Though the name of the applicant is not mentioned as an assailant, the two statements in the charge-sheet would take me to the role attributed to the present applicant in the entire conspiracy. One such statement is of one Rohan More, who state

that he is acquainted to one Nitin Wadekar, resident of Taluka Khed, District Pune and the present applicant, resident of Nanhekar wadi, Chakan and one Amol Londhe. He speak of the three persons conspiring together to commit offences and since he became aware of such criminal activities of the trinity, he isolated himself from them. He also speak of the offences registered against Nitin who was working with the gang of Shyam Dabhade and that an offence under MCOC is registered against Nitin along with leader Shyam Dabhade. He also referred to the applicant as a participant in the crime and that he had created a realm of terror. He specifically state that the applicant along with the other named persons were collecting protection money periodically in MIDC and Chakan area and enjoying the gains flowing therefrom. He referred to the deeds of Shyam Dabhade and his gang who were operating in Talegaon, Chakan and Mhalunge, MIDC and the information that they were collecting money was given to him by Amol Londhe. He further state that when the applicant and Nitin Wadekar had gone to meet Shyam Dabhade at Pawna Dam, Amol had not accompanied since he was out of station but after Shyam Dabhade would sent for him, he was to accompany them. He referred to an incident dated 16th October 2016 and state that Amol, Nitin and the applicant had driven on the motor-cycle of Nitin at the instructions of Shyam Dabhade and they went to Talegaon Dabhade. In the area adjoining vision city in Talegaon, Dabhade, a conspiracy was

hatched between Nitin, Amol, Monty (applicant) and Shyam Dabhade for doing away with the deceased Sachin Balasaheb Shelke and in furtherance of the conspiracy, the deceased was subjected to an attack at Khandge Petrol Pump in Talegaon Dabhade. He was assaulted by weapons and fire arm, resulting into injuries on his neck, chest, hands, face and that is how he was murdered and all the assailants fled from the spot. Amol, Nitin and Monty, the present applicant also went absconding. Nitin came to be arrested first and since Monty – the applicant had assaulted his close relation Ganesh, he was arrested by Chakan police station.

9 Another statement compiled in the charge-sheet is of one Sarang Marathe and in his supplementary statement dated 23rd March 2017. He speak about the gang being operated by Shyam Dabhade and on his arrest, by his brother Bunty. In great detail, he has spoken about the ransom amount collected by the gang and its members and state that the gang is in operation since 2013 and he speak of the manner in which the operations of the gang were executed. Since the deceased had refused to succumb to their demand and had filed a case against the members of the gang, conspiracy was hatched between the persons named by the said witness which include the present applicant to eliminate Sachin.

10 Apart from the two statements, the learned APP has also relied on the confessional statements of the two co-accused Amit Dabhade and Datta Waghole and according to the learned APP, the statements since recorded after following the procedure of law claim credence and can be used as an incriminating material against the present applicant.

11 The learned APP further state that the applicant was previously charged in an offence registered with Chakan police station vide C.R. No. 487 of 2015 under Section 354 IPC and Section 12 of the POCSO Act. She further submit that he evaded arrest in C.R.No. 332 of 2016 for the offence punishable under Section 302, 395, 201, 120B, 143, 147, 149 of IPC i.e. the offences in which the MCOCA has been invoked with prior approval of the competent authority and he committed another offence which was registered with Chakan police station vide CR.No. 244 of 2017 where Section 307 read with Section 34 IPC was invoked. He came to be arrested in the said offence and therefore, the learned APP would harp on the antecedents of the applicant and his likelihood of indulging into an offence on being released on bail.

12 The material collected in the charge-sheet is prima facie indicative of his involvement and active participation in the present crime, which involves a serious conspiracy by an entire

gang to eliminate a person who had raised his voice against their activities. The material compiled in the charge-sheet in form of statements and naturally only being in form of the statements since no direct evidence can be available in case of conspiracy as the conspiracy is hatched in the secrecy and darkness of the night and the material compiled in the charge-sheet at this stage is sufficient to implicate the applicant and charge him. As far as the submission of Mr. Shivarkar that the statements on which the prosecution is relying are recorded at a much later stage, I do not see any substance in the same as the conspiracy involve many accused persons and it is only after arrest of some of the accused, the entire conspiracy has surfaced and the names of some of the accused persons came to be revealed through the said statements. The deceased was done to death in a brutal manner and through a well-hatched conspiracy, thereby invoking Section 120-B of IPC.

The material in the charge-sheet also indicate that the applicant is an active gang member, a gang which is involved in series of offences, including offences committed by use of violence or threat of violence or intimidation or coercion or by other unlawful means with the motive of gaining illegal pecuniary benefit for the Organized Crime Syndicate and for the members of the gang, justifying the invocation of provisions of MCOCA. More than one charge-sheet has been filed against the gang leader and the affidavit filed by the ACP Sanjay Bhausahab Patil on 25th February 2020 enlist 19 offences against the gang leader Shyam

Dabhade and the applicant is being charge-sheeted as a member of the said gang who has conspired to commit the offence registered vide C.R. No. 332/16 registered with Talegaon Dabhade police station. The submission that the material in the charge-sheet fall short of the charge under MCOCA, do not hold any water and I am not convinced with the submission that since the co-accused Gurudev Marathe is released on bail, the applicant is entitled for parity. The said applicant was released on bail on 24th June 2018 by this Court, recording that there is no material in the charge-sheet indicating his complicity in the C.R. in question, which is not a case here.

13 The application therefore, deserves a rejection and is accordingly dismissed.

SMT. BHARATI DANGRE, J