

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

***CRIMINAL BAIL APPLICATION NO. 1277 OF 2019
WITH
INTERIM APPLICATION (STAMP) NO. 7959 OF 2020
IN
CRIMINAL BAIL APPLICATION NO. 1277 OF 2019***

Gopal Bajirao Ankusharao	...Applicant
Versus	
The State of Maharashtra	...Respondent

***WITH
INTERIM APPLICATION NO. 1595 OF 2019
(For Intervention)
IN
CRIMINAL BAIL APPLICATION NO. 1277 OF 2019***

Surekha Dilip Pawar	...Applicant/Intervener
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IN THE MATTER BETWEEN :

Gopal Bajirao Ankusharao	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Sudeep Pasbola with Mr. Karl Rustomkhan i/b Mr. Rahul Arote for the Applicant in BA/1277/2019

Mr. Karl Rustomkhan for the Applicant/Intervener in IA (ST)/7959/2020

Mr. Veerdhawal Kakade for the Applicant/Intervener in IA/1595/2019

Mr. S. V. Gavand, A.P.P a/w Mr. P. H. Gaikwad-Patil, A.P.P for the Respondent–State

Dy. S.P. Mr. Vikram Ramakant Kadam from Pandharpur Police Station, is present

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 12th FEBRUARY 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 244/2018 registered with the Pandharpur Police Station, for the alleged offences punishable under Sections 302, 303, 120B, 201, 143, 147, 148, 149 of the Indian Penal Code ('IPC'); under Sections 3, 4, 5, 25 and 27 of the Arms Act; under Section 135 of the Maharashtra Police Act and under Sections 3(1)(i), 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act ('MCOC Act').

3 Learned counsel for the applicant submits that there is no material to connect the applicant with the alleged offence. He submits that the applicant's statement has not been recorded under Section 18 of the MCOC Act and that the statement of other co-accused recorded under Section 18 of the MCOC Act does not point to the applicant's complicity in the alleged crime. He further submits that the applicant was in custody in

connection with another C.R. i.e. C.R. No. 797/2016 at the time of the alleged offence i.e. on 18th March 2018, when Sandeep Pawar was murdered. He submits that the 3 alleged witnesses on conspiracy, also do not throw any light as to what was the conversation that took place between the applicant and other co-accused. He submits that since the circumstances on record do not show the involvement of the applicant in the alleged crime, there is no impediment to grant of bail to the applicant in view of Section 21(4) of the MCOC Act.

4 Learned A.P.P vehemently opposes the application for bail. He submits that the applicant is the master mind and the principal conspirator who planned the murder of Sandeep Pawar. He submits that the applicant had motive to commit the murder of Sandeep Pawar, as Sandeep Pawar was gaining political supremacy in Pandharpur. He submits that the applicant is the gang leader and is known as 'Sirji'. He submits that the applicant and his gang members have created a reign of terror within the vicinity of Pandharpur City, Solapur and areas adjoining thereto. He submits that *prima facie*, the material on record clearly points to the complicity of the applicant. He further submits that the applicant had met the co-accused in the house of Manik Mane on 16th December 2017, for dinner. He submits that in the said meeting, co-accused-Sunil Wagh

(absconding accused and a right hand man of the applicant), Sandeep Adhatrao (the actual assailant of Sandeep Pawar) along with Vicky More (accused No.5) and other accused, were present. He submits that in the said meeting, a plan was hatched to murder Sandeep Pawar. According to the learned A.P.P, the accused surrendered in connection with C.R. No. 797/2016 only on 9th January 2018, after the applicant's anticipatory bail application was rejected right up to the Apex Court on 12th April 2017. He submits that after the applicant surrendered, as he complained of ill-health, the applicant was taken to CPR Hospital on 24th January 2018. He submits that in the said Hospital, co-accused-Sunil Wagh (absconding), Bandu Barangule and 3 others came to meet the applicant and that all the said persons had a secret conversation. He submits that pursuant thereto, the incident took place on 18th March 2018. Learned A.P.P submits that the *modus operandi* of the applicant is to organize commission of offences, whilst he is in jail. He submits that even in an earlier case i.e. C.R. No. 28/2010, the applicant had, whilst in jail, organized the commission of an offence i.e. murder of one Santosh Ghagre. He submits that in that case, it was the applicant who had the motive to kill Santosh. He submits that the applicant in the said case was initially convicted by the Sessions Court and subsequently acquitted by the High Court. He submits that nevertheless, this is the *modus operandi* of the applicant. Learned A.P.P relied on the

Section 18 statements of some of the accused to show the complicity of the applicant, in particular, the statement of Eknath Shinde (accused No.23). He submits that there are several statements of witnesses recorded under Section 164 of the Criminal Procedure Code, wherein, the said witnesses have specifically stated that the applicant is the gang leader of “Sirji Gang”, which has created a reign of terror in the vicinity of Pandharpur City. He submits that the statements also reveal the motive for the applicant to kill Sandeep Pawar i.e. as the deceased Sandeep Pawar was gaining political supremacy in the area. He further submits that the applicant has as many as 7 antecedents, out of which, he is acquitted in 2 cases and that rest of the cases are pending. He submits that the applicant has one case with co-accused-Sunil Wagh, who is presently absconding. Learned A.P.P has filed an affidavit of Dr. Sagar Kavade, Sub-Divisional Police Officer, Pandharpur Division, Pandharpur, Solapur, to oppose the aforesaid application. He submits that if the applicant is released on bail, the possibility of the applicant again committing the crimes and threatening/intimidating the witnesses in the present case, cannot be ruled out.

5 Learned counsel for the complainant adopts the submissions advanced by the learned A.P.P. According to the complainant, the applicant

is a gang leader of the 'Sirji Gang'. He further submits that on 12th September 2019, a C.R. was registered with the Vijapur Naka Police Station i.e. C.R. No. 593/2019 at the instance of Kalyanrao Shelikar of Vijapur Naka Police Station against 6 accused, for the alleged offences punishable under Section 399 of the IPC and Sections 3, 4 and 25 of the Arms Act, as it was revealed that the 6 accused were planning to murder Pradeep Pawar. During investigation, it transpired that the 6 accused were members of 'Sirji Gang' of the applicant and that the said 6 persons had conspired to murder Pradeep Pawar (brother of the deceased-Sandeep Pawar in the present C.R.). He submits that the applicant has conspired to kill Sandeep, as Sandeep was gaining supremacy in the area because of the good work that he was doing. He submits that the said conspiracy which was unearthed to kill Pradeep Pawar, was reported widely and that certain weapons were also recovered in the said crime. He submits that the complainant apprehends danger from the applicant and fears for her life, if the applicant is released on bail.

6 Perused the papers. According to the prosecution, deceased-Sandeep Pawar was on inimical terms with some of the co-accused since 2010, as Sandeep Pawar had allegedly murdered one Vinayak Kamble, a relative of some of the co-accused. It is the prosecution case that the

applicant is the head of an organized crime syndicate run under the name of 'Sirji Gang'. The said gang is stated to be operating in Pandharpur and nearby areas. The deceased-Sandeep was a sitting Corporator of Pandharpur Municipal Corporation at the relevant time and the applicant, a member of the Pandharpur Zilla Parishad. The incident in question is alleged to have taken place on 18th March 2018. According to the prosecution, at the behest of the applicant, Sandeep Pawar was murdered. It is alleged by the prosecution that Akshay @ Bablu @ Bali Survase (accused No.1), Manoj Shirshikar (accused No.3), Sandeep Adhatrao (accused No.6), Omkar Wagh (accused No. 11), Sonu @ Omkar Pukale (accused No.13), Rais Barikhan (accused No. 14), Vishal Pawar (accused No.16), Dada Ghasni @ Piraji Lagade (accused No. 20), Digambar @ Diga Janrao (accused No.21), Shahrukh Akbar Shaikh (accused No. 22), Eknath @ Natha Shinde (accused No. 23), Sagar @ Khandu Bansode (accused No. 24) and Bablu Shinde (accused No. 27), went to hotel Sriram Bhojanalaya, where Sandeep Pawar (deceased) was having tea and assaulted him with firearms and *koytas*. It is alleged that Akshay Survase, Manoj Shirshikar, Rais Barikhan, Dada Ghasni @ Piraji, Sagar @ Khandu Bansode assaulted the deceased with *koyta* and Sandeep Adhatrao, Omkar Wagh, Digambar @ Diga Janrao and Bablu Shinde assaulted Sandeep Pawar (deceased) with pistol. The post-mortem report, which is at page 524 of the application

reveals that the deceased had sustained in all 26 incised, chop wounds, including firearm injuries. Injury Nos. 1 to 5 in column No. 17 in the post-mortem report are firearm injuries and injury Nos. 6 to 26 are either chop wounds or incised wounds. The cause of death is stated to be head injury along with firearm injury to chest and abdomen. The incident had taken place in broad day-light. During the course of investigation, the role of the applicant was revealed. It was revealed that on 16th December 2017, the applicant along with other co-accused, in particular, Sunil Wagh (absconding accused), Sandeep Adhatrao (accused No.6), Vicky More (accused No. 5) had been to the house of witness-Manik More to celebrate the applicant's birthday. According to the prosecution, the conspiracy to kill Sandeep Pawar was hatched in Manik More's house. Manik More, in his statement, although does not state whether he heard any conspiracy being hatched, has stated that the accused asked him to leave them alone, since they wanted to talk something important. The record reveals that the applicant is an accused in C.R. No. 797/2016 registered with the Pandharpur Police Station for the alleged offences punishable under Sections 307, 452, 120B, 508 r/w 34 of the IPC. It appears that the applicant had applied for the anticipatory bail in the said C.R. and that the said Anticipatory Bail Application was rejected right upto the Apex Court. The order of the Apex Court dated 12th April 2017 rejecting the anticipatory

bail application, reveals that the applicant was granted two week's time to surrender. Despite the same, the applicant surrendered in the said C.R. i.e. C.R. No. 797/2016 on 9th January 2018. It further appears that whilst in custody, as the applicant was unwell, he was taken to CPR Hospital for treatment. In the said Hospital, co-accused-Sunil Wagh (absconding accused) and Bandu Barangule and 3 other unknown persons visited the applicant. According to the prosecution, a conspiracy to kill Sandeep Pawar was also hatched in the said meeting. In this regard, statements of two police witnesses i.e. Balaji Hari Gaikwad and Shantling Nanavare, who were on duty on 24th January 2018, when the applicant was taken to CPR Hospital, have been recorded. According to the statements of both these witnesses, Sunil Wagh and Bandu Barangule and 3 unknown persons visited the applicant in the Hospital and they were whispering with each other. Admittedly, no conversation was heard by the said witnesses. The incident of assault on Sandeep Pawar has admittedly taken place when the applicant was in custody. As far as the statements of co-accused recorded under Section 18 of the MCOC Act is concerned, the statement of Eknath @ Natha Shinde (accused No. 23) *prima facie*, reveals the complicity of the applicant. Admittedly, Eknath @ Natha Shinde has not retracted his confession. According to Eknath @ Natha Shinde (accused No. 23), Omkar Wagh (accused No. 11) had come to Pune and

that he along with Shahrukh Akbar Shaikh (accused No. 22) and Dada Ghasni @ Piraji Lagade (accused No. 20) met at Katraj Bus Depot. According to Eknath @ Natha Shinde (accused No. 23), Digambar @ Diga Janrao (accused No.21) informed him that they were going to get a contract to murder and that one Sunil Wagh (absconding accused and allegedly, the right hand of the applicant) was going to meet them on the next day. Pursuant thereto, Eknath @ Natha Shinde along with Digambar @ Diga Janrao met 2 persons opposite Beldere Petrol Pump at Aaroh garden. It is stated that Digambar @ Diga Janrao (accused No. 21) noticed one person i.e. Sunil Wagh. Sunil Wagh informed Eknath @ Natha Shinde and Digambar @ Diga Janrao that one person is to be murdered in Pandharpur and that they would be adequately compensated. It is stated that Sunil Wagh (absconding accused) gave Rs. 10,000/- for the expenses and one mobile phone with sim card and further instructed them that he would call on the said mobile number. It appears that when Eknath @ Natha Shinde asked Digambar @ Diga Janrao, who the said person was, Digambar @ Diga Janrao informed that he was Sunil Wagh, applicant's person and that he has given contract to commit murder of one person at Pandharpur. It is alleged that Sunil Wagh, the right hand man of the applicant, is still absconding. The said Sunil Wagh who had given the money to the aforesaid persons as well as sim card, is also an accused with the applicant

in another case i.e. C.R. No. 797/2016. From a perusal of the statements of some of the witnesses, it reveals that the motive was political supremacy of Sandeep Pawar. *Prima facie*, there is also some substance in the submissions advanced by the learned A.P.P with regard to the *modus operandi* of the applicant i.e. whilst in jail, the offences are committed, at his instance. There is a similar case i.e. C.R. No. 28/2010 where also the applicant, whilst in jail, had given contract killing for committing the murder of one Santosh with whom the applicant had a motive to kill. No doubt, the applicant was acquitted of the said case by this Court, however, *prima facie*, it appears that this is the *modus operandi* of the applicant. Therefore, merely because the applicant was in custody at the relevant time when the alleged offences took place, would not completely absolve him of the alleged offence. The defence of the applicant will have to be tested at the time of the trial. Applicant has 7 antecedents out of which, in 2 cases, he has been acquitted and the rest of the cases are pending. 3 of the said offences are bodily related offences. If the applicant is enlarged on bail, the possibility of the applicant committing other offences, cannot be ruled out. Similarly, the applicant intimidating/threatening the witnesses also cannot be ruled out. Learned counsel for the complainant has also expressed the complainant's apprehension, that she fears for her life.

7 Considering the aforesaid material on record and the bar of Section 21(4) of the MCOC Act, this is not a fit case to release the applicant on bail. Application is rejected. However, the trial of the applicant is expedited.

8 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

9 In view of the above order, nothing survives for consideration in Interim Application (Stamp) No. 7959/2020 and Interim Application No. 1595/2019. The same stand disposed of accordingly.

REVATI MOHITE DERE, J.