

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

CRIMINAL BAIL APPLICATION NO. 3106 OF 2021

Balu Raosaheb Gavade	...Applicant
Versus	
The State Of Maharashtra	...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 3153 OF 2021**

Sachin Raosaheb Gavade	...Applicant
Versus	
The State Of Maharashtra	...Respondent

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Mr. Rui Daruwala i/by Mr. Umesh R. Mankapure, Advocate for the Applicant.

Mr. P. N. Dabholkar, APP for the Respondent – State.

Mr. Sanjay B. Patil, Ast. Sub-Inspector Sanjaynagar police station.

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CORAM : PRAKASH D. NAIK, J.

DATE : 10th OCTOBER, 2022

PER COURT:

1. The applicants are arrested on 13.12.2016 and 29.07.2016 respectively in C.R. No. 84 of 2016 registered with Sanjaynagar Police Station for offence punishable under Section 395 of the Indian Penal Code.

2. The case of the prosecution is that the complainant is the owner of grocery shop. He closed his shop on 26.07.2016 at about 09:30 pm and he was proceedings on

his Honda Active two wheeler motorcycle alongwith witness. When they reached near Aarvade park, Sangli the accused dashed two wheeler of the complainant and took away cash of Rs.3,75,000/- from dickey of the scooter. The victim noticed the number of motorcycle. FIR was registered. Subsequently provisions of Sections 3(1)(ii), 3(2), 3(4) of the MCOC Act were invoked. Charge-sheet is filed.

3. The grounds for bail urged by advocate for applicants are as follows:-

- (i) The applicants are in custody for six years.
- (ii) There is no evidence to invoke the provision of MCOC Act against the applicants.
- (iii) The applicants are not involved with the gang leader Vijay Shinde in any other case.
- (iv) FIR was registered against the unknown person. However, in the Test Identification Parade the applicants were not identified. The applicant Balu Gavade has no criminal antecedents.

4. The prosecution has filed affidavit in reply opposing the application for bail. Learned APP submitted that the applicant Balu Gavade has one criminal antecedent vide C.R. No.4 of 2015 registered for offences under Sections 3,

25, 27 of the Arms Act. The applicant Sachin Gavade is also involved in C.R. No.4 of 2015. There is recovery of motorcycle from Balu Gavade. Trial has commenced. Prosecution has examined six witnesses. Confessional statement of the applicant Balu Gavade is recorded wherein he has admitted that he is present in the present crime.

5. The FIR was registered against the unknown persons. The vital evidence to link the applicant with the crime could have been test identification parade. Although there was a test identification parade, the applicants are not identified. It is pointed out by learned advocate for the applicant that C.R. No. 4 of 2015 is not registered against Balu Gavade, it is only against Sachin Gavade. Two wheeler which has been recovered at the instance of the applicant Balu Gavade apparently is not same vehicle which was given by complainant or accused.

6. There is recovery of cash of Rs.1,12,060/- from the applicant Balu Gavade. However, it is difficult to link said amount with the crime in question. It is relevant to note that the applicants are in custody for six years so far the prosecution has examined six witnesses. It is not clear as to how long it would take to conclude the trial. Prolonged

incarceration in custody would be ground for bail.

Considering these facts following order is passed.

ORDER

- (i) Criminal Bail Application Nos. 3106 and 3153 of 2021 are allowed;
- (ii) The applicants are directed to be released on bail in connection with C.R. No. 84 of 2016 which is subject matter of Special M.C.O.C. Case No. 156 of 2020 registered with Sanjay Nagar Police Station on executing P.R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- (iii) The applicants are permitted to furnish provisional cash bail security in the sum of Rs.25,000/- for a period of eight weeks in lieu of surety.
- (iv) The applicants shall report concerned Police Station once in a month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;
- (v) The applicants shall not tamper with the evidence.
- (vi) The applicant shall attend Trial Court regularly on the date of hearing of the case unless exempted by the Court for some reason.
- (vii) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)