

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

CRIMINAL BAIL APPLICATION NO. 77 OF 2021

Sagar Pratap Mohite ...Applicant
Versus
The State Of Maharashtra ...Respondent

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Mr. Ashok P. Mundargi Sr. Advocate i/by Mr. Jayant J. Bardeskar,
Advocate for the Applicant.

Mr. N. B. Patil, APP for the Respondent – State.

Mr. B. N. Pansare (ASI) Akluj Police Station, Present.

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CORAM : PRAKASH D. NAIK, J.
DATE : 12th OCTOBER, 2022.

PER COURT:

1. The applicant was arrested on 13th November, 2017 in connection with C.R. No.517 of 2016 registered with Akluj Police Station, Dist. Solapur for offences punishable under Sections 302, 120-B r/w Section 34 of Indian Penal Code (for short "IPC"). Subsequently, provisions of Sections 3(1)(i), 3(3) & 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short "MCOCA Act").

2. The case of the prosecution is that on 29th December, 2016, the complainant and his relative Nanasaheb Dilip Aasbe had visited the hospital and they were talking to each other. Two persons with mask on their face came there and fired at Nana. While Nana

started running from the spot, both of them again fired at him. After the incident of firing, the accused fled away on their motor cycle. Nana was taken for treatment and he died on 26th January, 2017. Investigation proceeded. The provisions of MCOC Act were invoked.

3. The applicant had preferred application for bail before the Court of Sessions which has been rejected vide order dated 14th October, 2019.

4. Learned Senior Advocate Mr. Mundargi submitted as under :-

i) The applicant is in custody from the date of arrest. There is no progress in the trial.

ii) The applicant is not assailant in the crime. He has been implicated on the ground of conspirator. There is no evidence to establish that the applicant is a conspirator in the crime.

iii) The prosecution is relying upon the statement of Ganesh Bhosale, wherein he has referred to one Pintu Mohite as conspirator, however Pintu Mohite is a different person. The learned Sessions Judge while rejected the application for bail has also referred to the statement of Ganesh Bhosale.

iv) Pintu Mohite was involved in another case along with

the applicant. He was convicted which establishes that he is different person.

v) The prosecution has relied upon the statement of the co-accused Parmeshwar @ Deva. In his statement there was telephonic conversation between the applicant and several other person with assailants. However, prosecution has failed to establish that the cell phone which was allegedly used belongs to the applicant. The said circumstance was based on statement of co-accused who has been granted bail.

vi) The applicant has no connection with the leader of gang. He is not involved in any case with him. The applicant has been convicted in the past for one offence and the appeal is pending before this Court and the sentence is suspended.

vii) The prosecution has relied upon chit, wherein the cell phone number is mentioned along with name of the applicant. There is no evidence to show that the said phone belongs to applicant or that he made calls from said cell phone.

5. Learned APP has relied upon the affidavit filed by the prosecution. It is submitted that, during the course of investigation, memorandum statement of the co-accused Parmeshwar @ Deve Nanasahbe Jadhav was recorded and he

referred to details of criminal conspiracy. As per the memorandum panchanama dated 19.01.2017, criminal conspiracy was hatched to commit murder of Nanasaheb Aasbe in the Tin Shed of applicant which is in front of Shriram Automobile Shop, near the Bank of India, Maliwadi Branch. The investigation revealed that the meeting was arranged at the said place in July – 2016, where the applicant/accused, co-accused Sajid Sayyad, Parmeshwar Jadhav, Dasharath Mane were present. Therefore, Section 120-B has been invoked in this case. The gang leader has several cases registered against him. The applicant has convicted in C.R. No.116 of 2007 for offences punishable under Sections 307, 147, 148 & 149 of IPC.

6. Thus, the case of the prosecution is that, on account of enmity, the applicant had conspired to commit the crime. However, there is no cogent evidence to establish the role of the applicant. The prosecution is relying upon the statement of the co-accused, which has no evidentiary value. The theory of call records between the applicant and the assailant is not supported by cogent material. It is not shown that cell phone belongs to applicant or it was in his possession. The other person, who allegedly part of conspiracy and exchanged telephonic calls with the assailant is granted bail by this Court. The applicant is in custody for a period of about 5 years. Considering the nature of evidence, the restrictions under

Section 21(4) of the MCOC Act would not be an impediment to grant bail.

7. Hence, I pass the following order:

ORDER

- i. Criminal Bail Application No.77 of 2021 is allowed;
- ii. The applicant is directed to be released on bail in connection with C.R. No.517 of 2016 registered with Akluj Police Station, Dist. Solapur on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- iii. 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.
- iv. The applicant 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 applicant shall not tamper with the evidence.
- vi. Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)