

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

CRIMINAL BAIL APPLICATION NO. 167 OF 2020

Sumit @ Rahul Vilas Ghule

..Applicant

Versus

The State of Maharashtra

..Respondent

Mr. Sudeep Pasbola with Mr. Ayush Pasbola with Karl Rustomkhan
i/by Mr. Rahul Arote, Advocate for the Applicant.

Shri. P. H. Gaikwad, APP for the Respondent-State.

CORAM : PRAKASH D. NAIK, J.

Date : 21st APRIL, 2022.

PC.

1. The applicant is seeking bail in C.R. No.531 of 2017 registered with Pimpri Police Station against the applicant and others for the commission of offences punishable under Sections 307, 143, 147, 148 and 149 of Indian Penal Code (for short "IPC"). Sections 3, 4 and 25 of the Indian Arms Act. Sections 37(1) and 135 of Maharashtra Police Act, 1951. First Information Report (for short "FIR") was registered on 16th September, 2017.

2. FIR was lodged by Ashok Kurawat. It was alleged that on 21.11.2010, case was registered against complainant's brother Santosh and others for committing murder of Rakesh Ghule at

Kalewadi, Pune. Complainant's brother Santosh was in custody till 2013 and thereafter he is released on bail. Accused Sachin Nade was close relative of Sashikant Ghule and Rakesh Ghule. Complainant's brother Santosh contested Pimpri Chinchwad Municipal Corporation Election of 2017 from ward No.47 as an independent candidate. Vinod Nade was contesting on behalf of National Congress Party. The accused had called Santosh and told him to withdraw his nomination. He was threatened of dire consequences, if he does not withdraw his nomination. However, Santosh contested election. He did not lodge any complaint regarding threats. On 15.09.2017, Santosh, Vijay Yadav and Nadeem Maniar traveled on a motorcycle to Om Shiv Tea Center for having tea. At about 3:30 p.m. the complainant received a call from Vijay Yadav informing that Santosh has been fired and he is taken to YCM Hospital for treatment. The complainant rushed to hospital and noticed that Santosh had suffered injuries. On inquiry by complainant, Santosh disclosed that Sachin Nade, Vicky Sutar, Vijay Nade and Avinash Nade came to the tea stall. They were armed with pistol. Four to Five other persons accompanying them had covered their faces with handkerchief. They

were armed with sickles. Sachin Nade, Vijay Nade and Avinash Nade fired at him. He suffered injuries on his head and abdomen. The accused threatened the members of public. Due to threats no one came forward to help them. Vijay Yadav and Nadeem Maniar threw chairs and other articles of assailants. The accused continued firing while running away from the place of incident.

3. During the course of investigation the Police obtained prior approval on 10.01.2018 under Section 23(1)(a) of Maharashtra Control of Organized Crime Act, 1999 (for short "MCOC Act") from Additional Commissioner of Police North Region, Pune City and invoked Sections 3(i)(ii), 3(2), 3(3) and 3(4) of MCOC Act, 1999. Investigation was conducted. Confessional statements of the arrested accused were recorded. Statements of witnesses Santosh, Nadeem Maniar and Vijay Yadav was recorded under Section 164 of Cr.P.C. Statements of other witnesses were recorded. Sanction was obtained under Section 23(2) of MCOC Act and charge-sheet was filed.

4. The applicant preferred an application for bail before the Special Judge under MCOC Act at Pune, vide order dated 11th

December, 2018, the application for bail was rejected.

5. Learned Advocate for the applicant submitted that the applicant has been falsely implicated in this case. He has not participated in crime. There is no direct evidence to show the involvement of the applicant in crime. There is no recovery from the applicant. The applicant is not having any criminal antecedents. The confessional statements are not corroborated by any evidence. The confessional statement of the applicant is exculpatory. No overt act is attributed to the applicant except that, he was keeping watch on the injured and accompanied Chetan Walke while handing over the weapons. The confessional statement of Vicky Sutar do not refer to the applicant. The applicant has been implicated due to enmity. He was not present at the place of incident. This fact is corroborated by CCTV footage. The CCTV footage on 15.09.2017 from 3:24 p.m. to 3:34 p.m. shows that two persons came on motorcycle. They were identified as Rahul Vishwakarma and Vicky Sutar. Thereafter, three persons arrived on motorcycle and they are identified by Baburao, Shubham and Pratik Waghere. The applicant is not shown as participant in the assault. In the entire charge-sheet, there is no iota

of evidence to suggest that applicant was a party to criminal conspiracy. There is no reference in police papers about any place, time or any incident where the accused assembled to conspire the commission of murder of Santosh. The applicant has completed his education as Bachelor of Engineering through Savitribai Phule Pune University. The co-accused Chetan Walke, Sachin Nade, Babalu Pal, Sachin Jawalkar, Hitesh Lingawat, Avinash Nade and Vijay Nade are released on bail.

6. Learned APP submitted that there is sufficient material showing involvement of the applicant in the crime. The confessional statements recorded under Section 18 of MCOC Act, shows the involvement of applicant as conspirator in the crime. He was involved in handing over weapons to the assailants. He was instrumental in keeping watch on the injured. The applicant is the member of crimes syndicate. Provisions of MCOC Act are invoked against the applicant.

7. Investigation Officer filed an affidavit-in-reply opposing this application for bail. In the said affidavit it is stated that there is previous enmity and grudge in the mind of accused. They formed

organized crime syndicate under the leadership of Vicky Sutar and as criminal conspiracy to kill injured Santosh Kurawat. Investigation revealed that accused Sashikant Ghule gave pistol and rounds to accused Chetan Walke and Rahul Ghule. The weapons were passed over to Vicky Sutar and Babalu Pal. The co-accused Babalu Pal provided sickles to other accused. The applicant and others kept watch on the injured. The co-accused Vicky Sutar and Pratik Waghere fired from pistols towards Santosh Kurawat who suffered injuries. Statements of accused were recorded under Section 18 of MCOCA Act. The applicant was arrested on 05.02.2018. Cases were registered against gang leader. Confessional statements shows involvement of the applicant in the crime.

8. Undisputably the applicant is not the assailant in the crime. The CCTV footage does not disclose the presence of the applicant at the spot of incident. The role of firing at the injured is attributed to the co-accused. There are no criminal antecedents against the applicant. There is no cogent evidence to establish his association with the alleged gang leader. The applicant is in custody from the date of arrest. There is no recovery from the applicant. The

FIR was registered against the co-accused. During course of investigation, confessional statements of the accused were recorded under Section 18 of MCOC Act. The confessional statements of co-accused Chetan Walke was recorded on 27.03.2018. The incident had occurred on 16.09.2017. As per the confessional statement of accused Chetan Walke the said accused and the applicant had met Vicky Sutar. They were in touch with him. In July-2017 they met Vicky Sutar for providing pistol and bullets. He stated that, he had kept two pistols and bullets in his car. Applicant and Chetan Walke were accompanied by Bunty @ Pratik Ghule. Chetan Walke and Vicky Sutar test fired round from the pistol. Since the pistol was defective it was returned to accused which was kept by Chetan Walke at his residence. Thereafter, the accused Chetan Walke and the applicant had met Vicky Sutar for providing two pistols to him. Thereafter, there was negotiation for providing the amount to the assailants. He further confessed that, he was keeping watch on the injured alongwith applicant. Confessional statement of the applicant was recorded on 8th February, 2018. In his statement it was stated that Sashikant Ghule handed over two pistols to Chetan Walke and

informed him to handed over it to Vicky Sutar and Babalu Pal. He also stated that Chetan Walke kept the pistol in his car and he had accompanied to Chetan Walke when he had visited Shelarwadi. The confessional statement of the applicant attributed prime role to the co-accused Chetan Walke. The confessional statement of Vicky Sutar was recorded on 02.02.2018. He stated that Sachin Nade and Babalu Pal had handed over to him pistols, sickles and cash of Rs.30,000/- after obtaining it from Chetan Walke. He has not attributed any role to the applicant. Thus the confessional statements of Chetan Walke, applicant Vicky Sutar and Sashikant Ghule are contradictory to each other. Chetan Walke who has been attributed serious role. Thus the applicant for granted bail by the special Court MCOC Act, vide order dated 1st October, 2021. Co-accused Sachin Dattu Nade who was allegedly one of the assailant by granted bail by this Court vide order dated 23rd September, 2021 passed in Criminal Application No.597 of 2020. Babalu Mahavir Pal was granted bail by Special Court in MCOC Act, Pune by order dated 16.07.2021. Sachin Prakash Jawalkar was granted bail by Supreme Court vide order dated 2nd July, 2021. Accused Hitesh @ Chotya Lingawat was

granted bail by Special Court under MCOC Act, vide order dated 3rd August, 2020. Avinash Dattu Nade was granted bail by Special Court under MCOC Act, vide order dated 17th June, 2020. Vijay Arun Nade was granted bail by this Court vide order dated 8th November, 2019 passed in Criminal Bail Application No.685 of 2019. The applicant was undisputably not the assailant, his involvement is based on confessional statements. The co-accused who had allegedly played greater role are released on bail. Considering the nature of evidence the embargo under Section 21(4) of MCOC Act, would not be impediment in granting bail to the applicant.

9. Hence, I pass the following order:-

ORDER

- i.** Criminal Bail Application No.167 of 2020 is allowed;
- ii.** The applicant is directed to be released on bail in connection with C.R. No.531 of 2017 registered with Pimpri Police Station on executing PR. Bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- iii.** The applicant shall report Pimpri Police Station once in a month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till conclusion of trial;

- iv.** The applicant shall not tamper with the evidence.
- v.** The applicant is permitted to furnish cash bail in the sum of Rs.50,000/- for a period of eight weeks in lieu of surety.
- vi.** Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)