

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 405 OF 2021**

Amit @ Birya Ramesh Kadam ...Applicant
Versus
The State of Maharashtra ...Respondent

....

Mr. Rahul K. Dhaigude, Advocate for the Applicant.

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

CORAM : PRAKASH D. NAIK, J.
DATE : 18th OCTOBER, 2022.

PER COURT:

1. This is an Application for bail in C.R.No. 279 of 2017 registered with Shirval Police Station, Dist. Satara, for offences punishable under Sections 387, 427, 435, 506 r/w Section 34 of the Indian Penal Code, 1860. The applicant was arrested on 7th February, 2018. During investigation 3(i)(ii) and 3(2), 4 of Maharashtra Control of Organized Crime Act (for short 'MCOC Act') were involved.

2. The prosecution case is as under :

The complainant is in construction business. He started new concern to manufacture concrete blocks under the name and style of Sneh Buildcon at Bholi, Taluka Khandala. The construction work and material required was kept at Gut No.171, taken on rented basis from owner Sachin Kadam. About two months ago, Birya@

Amit Kadam, Appa @ Nitin Salunkhe, Abdul Mehboob Shaikh and Vishal @ Babu Chavan came to site. They demanded a contract of PCC work (concretisation) after levelling of the land. The complainant came to know their names from their conversation. After 2-3 days thereof, Abdul Mehboob Shaikh visited the site and told the informant that he was sent by Birya and handed over quotation for PCC work from M.J. construction and told him to expedite the contract and not to escalate the dispute. Three weeks thereafter, Birya@ Amit Kadam, Appa@ Nitin Salunkhe, Abdul Mehboob Shaikh and Vishal@ Babu Chavan came to the site. They demanded work contract and threatened complainant. About four days ago Birya@ Amit Kadam, Appa@ Nitin Salunkhe, Abdul Mehboob Shaikh and Vishal@ Babu Chavan visited the site. The accused Amit Kadam threatened the first informant to either give the work contract or pay Rs.50,000/- per month, lest the first informant would not be allowed to carry on the business activity from the said premises. The first informant refused to cave in to the demand of the Accused. Thereupon, the Accused No.1 allegedly gave threat to eliminate the first informant. On 23rd November, 2017 at about 9:30 a.m., complainant received call from worker Santu Sudama Kushwah informing that, on the night intervening 22nd November, 2017 and 23rd November, 2017 Birya@ Amit

Kadam came to the site accompanied by three associates. They threatened the watchman – Abdul. The watchman got scared and ran from spot. Amit Kadam and his three associates broke the wind shield of JCB, and set on fire articles lying at spot. A couple of hours after they left the premises, the watchman went and found that the fabrication and electrical articles were burnt. The Accused had also uprooted 12 iron poles which marked the boundary of the premises.

3. The Applicant preferred Applications for bail before Sessions Court which were rejected by order dated 10th July, 2020 and 9th November, 2020.

4. Learned Advocate for applicant submitted that provisions of MCOC Act were misused. Applicant has been falsely implicated. There is no material to show that applicant and other accused are indulging in unlawful activities as member of gang/crime syndicate. Co-accused Nitin Salunkhe and Abdul Shaikh are granted bail. There is delay in lodging FIR. Identification of applicant is doubtful. Applicant is in jail since 4 years, 8 months. There is no progress in trial.

5. Learned APP submitted that applicant is leader of gang. Thirteen cases were registered against him. The case of co-accused can be distinguished. There is sufficient material to invoke

provisions of MCOC Act against applicant.

6. An Affidavit in Reply is filed on behalf of the Respondent-State. The application is resisted on the ground that there is material to show that the Applicant played an active role in the offences for which the Applicant and the co-accused have been arraigned. Affidavit refers to antecedents of applicant. Reliance is placed on statement of eye witness Abdul Adbasi recorded under Sections 161 and 164 of Cr.PC.

7. According to complainant, two months prior to incident, the accused demanded work of PCC. Co-accused Abdul Mehboob Shaikh handed over quotation of work. There were no threats. Accused were not armed with weapon. Three weeks thereafter accused again visited site and enquired about work. Complainant was threatened. Four days prior to incident in question accused No.1 (applicant) demanded work or Rs.50,000/- per month. Complainant was threatened that he would be finished. All the accused were together. No complaint of extortion or intimidation was lodged. The alleged incident of damage to property had occurred in night of 22nd November, 2017. Complainant is not eye witness to incident. His version is hearsay. He was informed about incident by worker Santu Kushwah who is not the eye witness to the incident on 23rd November, 2017 at about 9:30 a.m.

Information was received by police on 23rd November, 2017 at 17:30 p.m. FIR was registered on 23rd November, 2017 at 11:00 p.m. Complainant has mentioned names of all the accused in the FIR. Statement of Santu Kushwah was recorded on 24th November, 2017. He stated that he visited site on 23rd November, 2017 at 9:00 a.m. Watchman Abdul Abdasi informed him that one Biryah who used to visit his owner came there with three persons at around 11:00 pm. They abused him and caused damage to property and fabrication articles and motor were set on fire. This information was provided by Santu Kushwah to complainant. However, complainant lodged FIR by naming all the accused. Statement of eye witness Abdul Abdasi was recorded under Section 164 of Cr.P.C. on 8th March, 2018. According to him, on 22nd November, 2017 at about 11:00 p.m. he was at the site on duty. Four persons came there. They started causing damage to property. They abused him. He saw them in torch light. They used to meet his boss. Names of one of them was Biryah. He ran from the spot. He saw the incident from distance. After some time the accused left the place. The statement of this witness was earlier recorded under Section 161 of Cr.P.C. on 24th November, 2017 i.e. after registration of FIR. Thus eye witness had not referred to names of all the accused. According to him, the accused used to visit site and he came to

know name of one of them as Birya. The incident had occurred in night. Apparently it was dark. He saw accused in torch light. He also ran away from spot. No test identification parade qua applicant was conducted. Probably since one of the accused was named as Birya. However, the situation in which incident took place, learning about name of one of the accused as Birya it would have been appropriate to hold identification parade to identify applicant. The two other accused Abdul Shaikh and Vishal Chavan were identified in parade. Accused Abdul Mehboob Shaikh was granted bail by this Court vide order dated 6th July, 2022. According to prosecution Abdul used to accompany applicant to the site. He handed over quotation of M.J. Construction to complainant. The prosecution has relied on statement of Daulat Shaikh recorded under Sections 161 and 164 of Cr.P.C. He is the uncle of Abdul Mehboob Shaikh. He stated that his nephew Abdul took quotation from him. The prosecution has relied on antecedents of applicant. Three cases have resulted acquittal. Other cases are pending. From the chart it appears that the applicant is involved in two cases under Indian Penal Code in the past with Nitin Salukhe and no cases under Indian Penal Code with other accused in the past. It is not clear as to how all of them have acted in unlawful activities and created terror as member of crime

syndicate. Nitin Salunkhe was granted bail in accordance with Section 167(2) of Cr.P.C. No amount was extorted from complainant. The involvement of applicant in incident dated 22nd November, 2017 is doubtful. The applicant is in custody for a period of 4 years and 8 months. It is long period of incarceration without trial. There is nothing to indicate that applicant has delayed trial. In the facts of this case inspite of restrictions under Section 21(4) of MCOC Act, bail can be granted to applicant.

8. Hence, I pass the following order;

ORDER

- i. Criminal Bail Application No. 405 of 2021 is allowed;
- ii. The applicant is directed to be released on bail in connection with C.R. No.279 of 2017 registered with Shirval Police Station, Dist. Satara on executing PR. Bond in the sum of Rs.30,000/- with one or more sureties in the like amount;
- iii. The applicant is permitted to furnish cash bail in the sum of Rs.30,000/- 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.** 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 off accordingly.

(PRAKASH D. NAIK, J.)