

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.501 OF 2021

DASHRATH @ SONYA BABURAO GAIKWAD)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Manoj Mohite, Senior Advocate a/w. Mr.Chaitanya Pendse
a/w. Ms.Siddhi Bhosale, Advocate for the Applicant.

Mr.H.J.Dedhia, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 13th DECEMBER 2021
PRONOUNCED ON : 20th JANUARY 2022**

P.C. :

1 The present application has been moved by the
applicant under Section 439 of the Code of Criminal Procedure in
Crime No.158 of 2019 registered with Police Station Saswad, for
offences punishable under Sections 302, 307, 143, 147, 148, 149
of the Indian Penal Code (IPC), Section 3(25) and 4(25) of the

AVK

1/7

Arms Act and Section 3(1)(ii) and 3(4) of the Maharashtra Control of Organized Crime Act (MCOC Act).

2 Hasan Shaikh (deceased) was friend of informant. On 2nd May 2019 while informant along with deceased and Akshay Shivaji Kiratkarvve were returning from Narayanpur, at about 10.40 a.m. 14 to 15 unknown persons, on account of old quarrel and financial transaction came in a Bolero car and motorcycle and dashed against their car. They were armed with sickle and country made pistol and fired on the car. The prosecution alleges that they also fired on the head of deceased and committed his murder. The informant, accordingly, lodged the First Information Report (FIR) against those unknown persons.

3 Mr.Mohite, learned senior counsel for the applicant, submits that the FIR was lodged against unknown persons. Although identification parade was carried out in which some of the accused came to be identified but the present applicant was

not there. There is no recovery at the instance of the applicant nor there are any criminal antecedents. The only incriminating evidence against the applicant is confessional statement of co-accused, namely, Mayur @ Dadya Haribhau Kadu recorded under Section 18 of the MCOC Act which cannot be looked at this stage, it being exculpatory in nature. In order to substantiate his statement, the learned senior counsel invited my attention to the confessional statement of the said co-accused. In view thereof, the applicant deserves to be enlarged on bail, argued learned senior counsel.

4 Mr.H.J.Dedhia, learned APP, on the other hand, has not disputed the submission so advanced by the learned senior counsel for the applicant. However, according to the learned APP, the offence being of serious nature, the applicant may not be enlarged on bail.

5 Perused the investigation papers. I have also gone through the Affidavit-in-Reply and additional Affidavit of

Investigating Officer. Admittedly, the FIR came to be lodged against unknown persons. From the additional Affidavit it is seen that during the course of investigation, the Test Identification Parade was carried out before the Competent Authority wherein witness identified five accused persons, namely, Abhishek Umesh Dhumne, Swapnil Sandhya Kale, Tanmay Chandrakant Pol, Suraj Dilip Tagunde and Pawan Babahji Talekar. Pertinently enough, the name of applicant does not appear. It further appears from the Affidavit-in-Reply that recovery of country made pistols were also effected at the instance of other accused.

6 The additional Affidavit-in-Reply also shows that the gangleader is Mangesh Shivaji Kadam having criminal antecedents as given in paragraph 18. Interestingly, no such criminal antecedent of the applicant is brought on record.

7 Thus, the only incriminating evidence against the applicant is in the form of confessional statement of co-accused Mayur @ Dadya Haribhau Kadu recorded under Section 18 of the

MCOC Act. I have carefully gone through the said statement. It implicates the applicant, in as much as, according to the co-accused the applicant was armed with a sickle. It further shows that the applicant along with other co-accused Vaibhav Balasaheb Itkar had given a blow of sickle on the person of the deceased. Interestingly, his statement nowhere implicates himself, and thus, in a sense, is exculpatory in nature.

8 It is also pertinent to note that there is no recovery at the instance of applicant although it is alleged that he was armed with sickle. Needless to say, the prosecution is relying on the said confessional statement of co-accused Mayur @ Dadya Haribhau Kadu in order to bracket him in the offence of criminal conspiracy. The said statement, as already noted, being exculpatory in nature, definitely needs some corroboration in order to lend some assurance to its positivity. No criminal antecedents are also brought on record.

9 In the circumstances, in my considered view, the bar under Section 21(4) of the MCOC Act would not preclude the Court for granting bail to the applicant, in as much as he is otherwise entitled to be released on bail, having regard to the material on record.

10 For the aforesaid reasons, the application is allowed.
Hence, I pass the following order :

ORDER

- (i) Applicant – Dashrath @ Sonya Baburao Gaikwad shall be released on bail in Crime No.158 of 2019 registered with Police Station Saswad, on his executing PR.Bond in the sum of Rs.50,000/- with one or two sureties in like amount.
- (ii) The applicant shall stay out of jurisdiction of Pune Rural Police Station till conclusion of trial.
- (iii) The applicant shall furnish details of his residence, where he would reside after being released on bail, to the Investigating Officer.

- (iv) The applicant shall not tamper with prosecution evidence and shall attend Special Court proceedings regularly, unless exempted by the Special Court for some reason.
- (v) The applicant shall report nearest Police Station where he would reside after being released on bail.
- (vi) Bail before the trial Court.
- (vii) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (viii) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.
- (ix) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)