

Santosh

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

BAIL APPLICATION NO. 552 OF 2020

Ankush Ram Gonate ...Applicant
Versus
State of Maharashtra ...Respondent

Ms. Shubhangi Parulekar, for the Applicant.
Mr. S. H. Yadav, APP for the State/Respondent.

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CORAM: N. J. JAMADAR, J.

RESERVED ON: 17th JANUARY, 2022

**PRONOUNCED ON: 19th JANUARY, 2022
(Video Conferencing)**

ORDER:-

1. The applicant, who is arraigned in CR No.239 of 2019, registered with Paud Police Station, for the offences punishable under Sections 302 and 364 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Section 3(1)(ii) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 ("the MCOC Act"), has preferred this application to enlarge him on bail.

2. Initially, CR No.239 of 2019 was registered for the offence punishable under Section 302 of the Penal Code only, on the basis of the report lodged by Baban Hulawale, the Police Patil of village Ravade, Taluka Mulshi, District Pune, to the effect that a

dead body of an unknown person with marks of injuries on the face and neck by means of sharp weapon, was found in the field of one Vasant Hulawale. During the course of initial investigation, it transpired that Mayur Bhagwat, (hereinafter referred to as, "the deceased"), a resident of Erandwana Gavthan, Karve Road, Pune, was missing. Smt. Jyoti Bhagwat, the wife of the deceased, identified the dead body to be that of the deceased.

3. Jyoti informed the police that the deceased had obtained a sum of Rs.20,000/- from Vishal Desai, the co-accused, who was dealing in the business of illegal money lending. In the month of January, 2019, co-accused Vishal Desai and Pappu @ Yogesh Dabhade and Suraj Dhokale, who were notorious for rowdy behaviour, visited the house of the deceased and threatened the deceased out of his life if the loan amount was not repaid along with agreed interest. Jyoti claimed to have pacified them and paid a sum of Rs.5,000/-. On the next day, her brothers-in-law Rajesh and Kiran, assured the co-accused Vishal, Yogesh and Suraj that they would repay the loan amount availed by the deceased.

4. Jyoti further informed that on 12th May, 2019, at about 8.45 pm. the co-accused Vishal, Yogesh and Suraj came to their

house in a Ford Icon car. The deceased was taken away by the co-accused in the said car. The deceased did not return home till 15th May, 2019. While Smt. Jyoti and her brothers-in-law were on their way to police station to lodge report, a police official informed them to visit the morgue at Sasoon Hospital as an unidentified dead body was kept thereat. Jyoti visited Sasoon Hospital and identified the dead body to be that of her husband Mayur. Hence, Jyoti alleged that the deceased was abducted and murdered by co-accused Vishal, Yogesh, Suraj and their associates for failure to repay the loan amount availed from Vishal.

5. During the course of investigation, it further transpired that the applicant Ankush Gonate also accompanied the co-accused on the night intervening 12th May, 2019 and 13th May, 2019. The accused came to be arrested. The accused made discovery leading to the recovery of the clothes, which he wore at the time of the occurrence.

6. The investigation further revealed that co-accused Suraj Dhokale was the leader of the organised crime syndicate, comprising of rest of the accused, including the applicant, which indulged in organised crime. Thus, with the approval of the competent authority, under Section 23(1) of the MCOC Act

the offences punishable under Sections 3(1)(ii) and 3(4) were added. Post completion of investigation, charge-sheet came to be lodged against the accused including the applicant.

7. The applicant has preferred this application on the ground that there is no material whatsoever to connect the applicant either with the organized crime syndicate or the crime in question. No overt act has been attributed to the applicant by any of the witnesses. Nor any weapon of offence has been recovered at the instance of the applicant. The confessional statement of the co-accused Vishal merely referred to the fact that the applicant also travelled in the car in which the deceased was allegedly abducted. The material pressed into service by the prosecution against the accused, even if taken at par, does not *prima facie* indicate the complicity of the applicant.

8. An affidavit-in-reply is filed by Mr. Rajendra Kadam, Deputy Superintendent of Police, in opposition to the prayer for bail. Placing reliance on the statement of witness Sandeep Dattu Palaskar and the confession of accused no.2 Vishal Desai, recorded under Section 18 of the MCOC Act, it is contended that there is adequate material to sustain the involvement of the applicant in the crime. An apprehension is also expressed that

in the event the applicant is released on bail, he would indulge in identical proscribed activity and threaten the witnesses.

9. I have heard Ms. Parulekar, the learned Counsel for the applicant, and Mr. Yadav, the learned APP for the State, at some length. Perused the material on record.

10. Ms. Parulekar strenuously submitted that there is no material which would indicate, even remotely, that the applicant had any role to play either in the abduction or murder of the deceased. Taking the Court through the statement of Jyoti, the wife of the deceased and Sandeep Dattu Palaskar, a relative of co-accused Yogesh, and the confessional statement of co-accused Vishal, Ms. Parulekar urged that, at the highest, an inference can be drawn that the applicant accompanied the co-accused on the night of occurrence. In the absence of any other incriminating circumstance, like recovery of the weapon of offence or that the deceased was lastly seen in the company of the accused/applicant, the said fact, by itself, is not sufficient to incriminate the accused. In any event, according to Ms. Parulekar, there is not a shred of material to show that the applicant is a member of the organised crime syndicate, led by co-accused Suraj Dhokale. There are no criminal antecedents

to the credit of the applicant. Thus, the applicant deserves to be enlarged on bail.

11. In opposition to this, Mr. Yadav, the learned APP, submitted that the injuries found on the person on the deceased, as recorded in the postmortem report, indicate that the deceased was brutally done to death. Refuting the submission on behalf of the applicant that there is no material to connect the accused with the crime, the learned APP would urge that the clothes recovered pursuant to the disclosure made by the accused had black reddish stains. Mr. Yadav further urged that since the applicant is arraigned for the offences punishable under MCOC Act, the interdict contained in Section 21(4) of the MCOC Act comes into play and the applicant is not entitled to be enlarged on bail unless the conditions stipulated in clause (b) are satisfied.

12. I have given anxious consideration to the rival submissions. First and foremost, it is imperative to note that Jyoti, the wife of the deceased, never referred to the applicant as the person who ever visited her house as an associate of co-accused Vishal or Suraj. Secondly, on 12th May, 2019, only co-accused Vishal, Yogesh and Suraj had visited her house and took the deceased away in Ford Icon car. Thirdly, the statement

of Sandeep Palaskar, pressed into service by the prosecution, simply refers to the presence of the applicant with the abovenamed co-accused and that the extra-judicial confession was allegedly made by Yogesh Dabhade. Fourthly, without delving into the aspect of the veracity, reliability and truthfulness of the confessional statement made by co-accused Vishal Desai, and construing it rather generously, it is pertinent to note that co-accused Vishal appears to have stated that after the deceased was made to accompany them, they picked up the applicant Ankush as well. However, no role of assault, of whatsoever nature, is attributed to the applicant Ankush. In contrast, the role of inflicting blows by means of sickle is attributed to co-accused Yogesh Dabhade and Vishal himself. Lastly, the alleged discovery of the clothes, which the applicant wore at the time of the occurrence, also *prima facie* appears to be bereft of any incriminating tendency as, on the one hand, it is recorded in the seizure memo that the clothes had black reddish stain and, on the other hand, the investigating agency has not yet obtained the chemical analyst's report to establish the nexus between those clothes and the crime.

13. The aforesaid circumstances lead to a legitimate inference that, at the highest, the material would indicate that the

applicant accompanied the co-accused at the time of the alleged occurrence. In the absence of any other circumstance, at this stage, it would be rather hazardous to draw an inference that the applicant shared the common intention to abduct and eliminate the deceased.

14. I am conscious that in view of the indictment for the offences punishable under Section 3(1)(ii) and 3(4) of the MCOC Act, the interdict contained in Section 21(4) of the MCOC Act comes into play. A person accused of the offences punishable under the MCOC Act, cannot be enlarged on bail unless the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. I am also mindful of the proposition that in view of the definition of “continuing unlawful activity” under Section 2(1)(d) of the MCOC Act, it is not the requirement of law that two charge-sheets for the cognizable offences punishable with imprisonment for three years or more need to be filed against each of the members of such syndicate. It is the membership of the organised crime syndicate, which makes a person liable under the MCOC Act. What is of significance is the nexus or the link of the person with organised crime syndicate. The linchpin of the offence of

organised crime is the nexus with the organised crime syndicate.

15. On the aforesaid touchstone, reverting to the facts of the case, evidently, seven crimes were shown to have been registered against the co-accused Suraj Dhokale, the alleged gang leader. In contrast, no offence, apart from CR No.239 of 2019 leading to instant prosecution, is registered against the applicant. It is not the prosecution case that the applicant is arraigned in any of the offences registered against Suraj Dhokale, the alleged kingpin, or other alleged members of the organised crime syndicate, as a co-accused. Nor is it a case of the prosecution that offences have been registered against the petitioner individually.

16. The genesis of the occurrence is also of some salience. The deceased allegedly borrowed money from co-accused Vishal Desai, who had been allegedly dealing in the business of illegal money lending. There is not a shred of material to indicate that the applicant is also involved in the said illegal money lending business or any other unlawful activity.

17. In the aforesaid view of the matter, it can be legitimately inferred that *prima facie* there is next to no material to

establish the nexus between the applicant and the organised crime syndicate.

18. In the totality of the circumstances, it appears that the embargo against release on bail contained in sub-section (4) of Section 21 may not operate qua the applicant with full force and vigour. A profitable reference, in this context, can be made to the judgment of the Supreme Court in the case of *Ranjitsingh Brahmjeetising Sharma vs. State of Maharashtra and another*¹, wherein the approach of the Court in the matter of, consideration of the prayer for bail in the face of the interdict contained in Section 21(4) of the MCOC Act was delineated.

19. The observations in paragraph no.44 are instructive and, hence, extracted below:

“44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the Court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the Legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the Court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of

1(2005) 5 Supreme Court Cases 294.

the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.”

20. Applying the aforesaid ratio to the facts of the case at hand an inference becomes inescapable that the applicant has made out a *prima facie* case for grant of bail. The apprehension on the part of the prosecution can be taken care of by imposing appropriate conditions. Hence, I am persuaded to exercise the discretion in favour of the applicant.

21. Hence, the following order.

: O r d e r :

- (i) The application stands allowed.
- (ii) The applicant, Ankush Ram Gonate, be released on bail in MCOCA Special Case No.53 of 2019, arising out of CR No.239 of 2019, registered with Paud Police Station, on furnishing a PR Bond in the sum of Rs.25,000/- and a surety in the like amount to the satisfaction of the learned Special Judge.
- (iii) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.
- (iv) The applicant shall furnish his current address and contact number and intimate

change in address and contact number to the learned Special Judge.

- (v) The applicant shall regularly attend the proceedings before the learned Special Judge.
- (vi) The applicant shall not leave India without prior permission of the learned Special Judge.
- (v) By way of abundant caution, it is clarified that the observations hereinabove are made for the limited purpose for determining the entitlement of the applicant for bail and they shall not be construed as an expression of opinion on the merits of the matter and the Special Court shall not be influenced by any of the observations made hereinabove while determining the guilt of the applicant and/or co-accused.

[N. J. JAMADAR, J.]