

Santosh

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

BAIL APPLICATION NO. 938 OF 2020

Ashish Kailas Kamble

...Applicant

Versus

State of Maharashtra

...Respondent

SANTOSH
SUBHASH
KULKARNI

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Mrs. S. P. Parulekar, for the Applicant.

Mr. Y. Y. Dabake, APP for the State.

Mr. Nandkishor Bhosale Patil, ACP, Dehuroad Section, Pimpri
Chinchwad, present.

Mr. S. D. Kusale, P.H., Shirgaon Police Station, Pimpri
Chinchwad, present.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 5th July, 2022

PRONOUNCED ON: 26th July, 2022

ORDER:-

1. The applicant, who is arraigned in CR No.654 of 2018, registered with Talegaon Dabhade Police Station, District Pune, for the offences punishable under Sections 395, 323 and 506 of the Indian Penal Code, 1860 ("the Penal Code"), Section 3 read with Section 25 and Section 4 read with Section 27 of the Arms Act, 1959 and Section 3(1)(ii) and Section 3(4) of the Maharashtra Control of Organized Crime Act, 1999 ("the MCOC Act") has preferred this application for bail.

2. The indictment against the applicant and the co-accused can be stated as under:

(a) Mr. Vishwanath Bhegde (the first informant) resides at Talegaon Dabhade. On 5th October, 2018 at about 3.30 pm. the first informant and his friend Vinod Bhegde, Balasaheb Shedge and Santosh Bhegde were sitting in the tin shade of Balasaheb Shedge, situated behind Jijamata Temple, Jijamata Chowk, Talegaon Dabhade. Suddenly, eight to nine unknown persons came thereat on two Activa mopeds and one black motorcycle. They barged into the shed where the first informant and his friends were sitting. One of them was armed with a country made pistol of golden colour. Rest were armed with scythes. Those persons placed the scythes at the throat of the applicant and his friends. They were asked to keep quite lest they would be killed. While unleashing fist and kick blows, one of them snatched the gold chain from the neck of the first informant. They also robbed cash amount of Rs.40,000/- from the first informant and his friends. Thereafter the dacoits fled away on the motorcycles.

(b) The first informant approached Talegaon Dabhade Police Station on 15th November, 2018 and lodged report against unknown persons. Describing their features as being of 20 to 25 years of age. They all had blue jeans pant. They wore T-shirts of different colour. The first informant further asserted

that since the dacoits had threatened to kill, he and his friends did not lodge the report with the police. However, on 8th November, 2018, few of the dacoits were seen at Talegaon square. Hence, the report.

(c) Investigation commenced. The applicant and co-accused were arrested. It transpired during the course of investigation that co-accused Rohit Gaikwad was the leader of the organized crime syndicate, of which the rest of the accused and the applicant were members. Allegedly, the accused were indulging in unlawful criminal activities and organized crimes were committed as the members of the organized crime syndicate. Thus, post prior approval under Section 23(1)(a) of the MCOC Act the offences punishable under MCOC Act came to be added. Post completion of investigation, with the previous sanction of the competent authority, cognizance of the offences has been taken by the learned Special Judge.

(d) The applicant preferred an application for bail before the learned Special Judge. By an order dated 19th December, 2019, the learned Special Judge was persuaded to reject the application opining *inter alia* that the offences punishable under MCOC Act were *prima facie* made out. To repel the contention on behalf of the applicant that there was neither direct nor

circumstantial evidence to establish the identity of the applicant as one of the persons who robbed the first informant and his friends, the learned Special Judge relied upon CCTV footages to hold that *prima facie* the applicant appeared to be one of those robbers.

3. I have heard Mrs. Parulekar, the learned Counsel for the applicant and Mr. Dabake, the learned APP for the State, at some length. With the assistance of the learned Counsels for the parties, I have perused the material on record.

4. Mrs. Parulekar submitted that there is no material to support the complicity of the applicant in the alleged offences. FIR was lodged against unknown persons. There is an inordinate delay in lodging the first information report (FIR) as the incident had occurred on 5th October, 2018 and the FIR came to be lodged on 15th November, 2018. The reason sought to be ascribed to explain the delay is plainly unsustainable. None of the witnesses, who were allegedly robbed, named the applicant as one of the robbers, even though their statements were recorded after more than a month of the alleged occurrence. To add to this, neither the first informant nor any of the witnesses identified the applicant as one of the robbers in the test identification parade. In the circumstances, the learned

Special Judge, could not have banked upon the CCTV footage to fix the identity of the applicant as one of the robbers, without there being any forensic evidence to establish the authenticity and genuineness of the CCTV footages. What accentuates the situation, according to Mrs. Parulekar, is the fact that the learned Special Judge while releasing co-accused Hanumant Chandanshive on bail, declined to give much weight to the CCTV footage. The same dispensation ought to have been given to the applicant as well, submitted Mrs. Parulekar.

5. On the aspect of invocation of the provisions of MCOC Act, Mrs. Parulekar submitted that all the offences arrayed against the applicant, apart from the subject crime, were registered subsequent to the crime in question, in the year 2018. Mrs. Parulekar submitted that it seems, the applicant and the co-accused were implicated in all the offences of robbery and dacoity, which were undetected. Thus, it cannot be said that the applicant indulged in continuous unlawful activities as a member of organized crime syndicate.

6. Mr. Dabake, the learned APP, in his usual fairness, submitted that the CCTV footage has not been sent for forensic analysis.

7. Nonetheless, according to Mr. Dabake, in the light of the antecedents of the gang leader and the offences registered against the applicant, it cannot be said that the invocation of MCOC Act against the applicant and co-accused is unjustifiable. Emphasis was laid on the fact that 8 crimes have been registered against Rohit Gaikwad, the gang leader. Apart from the subject crime, four crimes have been registered against the applicant. In this view of the matter, the learned Special Judge, according to Mr. Dabake, was justified in observing that it is not the requirement of law that more than one charge-sheet for the offence punishable with imprisonment for more than three years ought to have been filed against each member of the organized crime syndicate. Thus, the fact that the offences were registered against the applicant subsequent to or in proximity with the subject crime, in the year 2018, does not detract materially from the invocation of the MCOC Act against the applicant.

8. I have given anxious consideration to the aforesaid submissions.

9. To start with, it may be apposite to note that the first informant and the witnesses, who were allegedly robbed, were in

unison on the point that the robbers were unknown persons. The alleged incident occurred on 5th October, 2018. FIR came to be lodged on 15th November, 2018. Indeed, there is significant delay in lodging the FIR. The aspect of delay, at this stage, cannot be said to be wholly inconsequential.

10. It is imperative to note that the first informant as well as the witnesses who were allegedly robbed namely Vishwanath Bhagde, endeavoured to describe the features of the robbers. They were in the age group of 20 to 25 years. The witnesses have described the clothes, which those unknown persons were wearing, and the weapons with which they were armed. However, in the TI Parade held on 11th December, 2018, none of the four witnesses identified the applicant as one of the persons, who robbed them.

11. The prosecution has banked upon the CCTV footage to fix the identity of the robbers. It would be relevant, in this context, to note the observations of the learned Special Judge. Paragraph 9 reads as under:

“9. I may note that it is the contention of the prosecution that in CCTV footage seized by police from the nearby CCTV installation, it is clear that the accused applicant was present and he actively participated in the crime. CCTV footage is filed on record. Copy of the same was supplied to the accused. CCTV footage was seen by me in presence of Special P.P. Shri. Phargade, Advocate for the applicant accused Shri. Bhagwat and PSI Shri. D. B. Bajgire. CCTV

footage specifically shows the accused applicant as the person who had put on black T-shirt with full sleeves and who entered with scythe in the tin shed. On the basis of the copy of CCTV footage given to accused, the father of the applicant has filed the affidavit at Exh.14 contending that he had seen footage but it is blur and any person appearing in CCTV footage do not appear to be the applicant. Here I may note that after filing of affidavit by the father of the applicant accused, I have again gone through the CCTV footage with the help of police and Special P.P. in my chamber. The learned advocate for the applicant was also called at that time but he submitted that he had already seen the CCTV footage on the first occasion and second time he did not want to see it again. When I have gone through the CCTV footage, on the back ground of the affidavit filed by the father of the accused applicant, I found that the pictures in CCTV footage were clear. The CCTV footage did not appear blur. Particularly the face of the accused no.3 i.e. present accused applicant and his overact of carrying scythe were clearly seen. It appears that affidavit Exh.14 is nothing but an unsuccessful attempt by the desperate father to create doubt on CCTV footage in order to get bail of his son."

12. From the aforesaid observations, it becomes evident that the learned Special Judge viewed the CCTV footage with the help of police and Special P.P. in his chamber. It was recorded that the face of the applicant and his overt act of carrying scythe were clearly seen. At this juncture, I do not deem it necessary to delve into the criticism against the aforesaid exercise advanced by the learned Counsel for the applicant. However, *prima facie*, it appears that none of the prosecution witnesses has identified the applicant as one of the robbers either in the TI Parade or even after looking at the CCTV footage. Thus, *prima facie*, there is an element of uncertainty about the identity of the applicant as one of the robbers.

13. While releasing the co-accused Hanumant Chandanshive (A7) on bail, the learned Special Judge observed as under:

“6. It is clear that panchnama of CCTV installed at nearby shop shows seven accused persons. However, the name of present applicant is missing in said CCTV panchnama. Learned Spl. PP did not dispute that name of the applicant is not in CCTV panchnama. Admittedly, till the date no test identification parade in connection with the present applicant is done to connect him with the crime. Admittedly, nothing is seized in connection with the crime, at the instance of present applicant. The only material which prosecution is relying is the alleged confessional statement of gang leader Rohit and the statement of the applicant's mother Lata.”

14. Mrs. Parulekar, the learned Counsel for the applicant, submitted that the aforesaid reasoning applies with equal force to the applicant. On a careful consideration of the material on record I find that the aforesaid submission is not without substance.

15. This propels me to the consideration of the applicability of the interdict contained in Section 21(4) of the MCOC Act. In the affidavit-in-reply on behalf of the respondent it is contended that eight crimes have been registered against the gang leader Rohit Gaikwad (A1). Likewise, apart from the crime in question, four crimes for serious offences have been registered against the applicant and the Courts have taken cognizance of those offences.

16. It is true that against the gang leader, as many as eight crimes are shown to have been registered since the year 2014. In few of those crimes, the Courts have taken cognizance of the offences as well. However, the submission on behalf of the applicant that qua the applicant the offences came to be registered subsequent to the registration of the subject crime, in which MCOC has been invoked, warrants consideration. It appears that, in the year 2018 itself, in proximity, if not subsequent to, the registration of the subject crime, crimes were registered against the applicant. Two, for the offences punishable under Section 395 and one for the offence punishable under Section 399 of the Penal Code, apart from the offences punishable under the Arms Act. Nonetheless, in view of the settled legal position that it is not the requirement of law that two charge-sheets must have been filed against each of the organized crime syndicate, at this stage, I am not inclined to delve deep into this aspect of the matter. It, *prima facie*, appears that the applicant and the co-accused were implicated in the offences of identical nature in proximity to the registration of the subject crime. The complicity or otherwise of the applicant and the co-accused therein is a matter for adjudication in each of those crimes.

17. In the totality of the circumstances, however, the aforesaid factor of registration of offences in proximity to the subject crime is also required to be taken into account in considering the prayer for bail. The material on record, at this stage, renders the complicity of the accused for the subject crime in the corridor of uncertainty. Moreover, the applicant has been in custody since 22nd November, 2018. There does not seem to be a realistic prospect of the conclusion of the trial within a reasonable period. Continued detention of the applicant, in the light of the aforesaid nature of the material pressed into service against the applicant, in my view, would negate the constitutional guarantee of speedy trial. Therefore, I am persuaded to exercise the discretion in favour of the applicant.

18. Hence, the following order:

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant – Ashish Kailas Kamble be released on bail, in CR No.654/2017, registered with Talegaon Dabhade Police Station, on furnishing a P. R. Bond in the sum of Rs.30,000/-, with one or two sureties 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 permanent residential address and contact details to the Police Inspector, Talegaon Dabhade Police Station, within a week of his release from prison and intimate the change, if any.

(v) The applicant shall mark his presence at Talegaon Dabhade Police Station on the first Monday of each month, in between 10.00 am to 12.00 noon for the period of two years or till the conclusion of the trial, whichever is earlier.

(vi) The applicant shall not indulge in any activity identical to the one for which he has been arraigned in this case.

(viii) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(ix) By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not

be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused.

(viii) All concerned to act on an authenticated copy of this order.

[N. J. JAMADAR, J.]