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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2294 OF 2022

IN

CRIMINAL APPEAL NO. 625 OF 2021

Jameer Mehbood Shaikh @ Jamya

Age – 40 yrs, Indian Inhabitant,
R/at – Karvenagar, Parijat Colony,
Galli No.5, Kothrud, Pune.
(At present in Yerawada Jail)

.. Applicant
(Orig. Accused No.11)

Versus

The State of Maharashtra,
(Through Kothrud Police Station, Pune)
in C.R. No.562 of 2006.

.. Respondent

Mr. Sanjeev Kadam a/w. Mr. Shailesh D. Chavan and Mr. Vishal Khatavkar, Advocates for Applicant.

Mr. Vikas Shivarkar, Advocate for Intervener.

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

**CORAM : A.S. GADKARI &
MILIND N. JADHAV, JJ.**

Reserved on : 07th September 2022.

Pronounced on : 16th September 2022.

P.C. [PER MILIND N. JADHAV, J.]:

. Heard learned Advocate appearing for the respective parties.

2. By the Judgment and Order dated 22.07.2021, Applicant (Orig. Accused No.11) is convicted by the learned Additional Sessions Judge and Additional Special Judge under the Maharashtra Control of Organized Crime Act, 1999 (for short “**MCOCA Act**”), Pune in MCOCA Case No.02 of 2007 for offence punishable under Section 302 of the

Indian Penal Code, 1860 (for short “**IPC**”) and directed to suffer rigorous imprisonment for life and to pay fine of Rs.1,000/- and in default thereof to suffer rigorous imprisonment for six months; he is directed to suffer rigorous imprisonment for three years for the offences punishable under Sections 143, 147, 148 and 149 IPC and also directed to suffer rigorous imprisonment for two years for offences punishable under Section 427 IPC; all substantive sentences to run concurrently.

3. Applicant was arrested on 25.10.2006 and granted bail pending trial and after passing of the aforesaid Judgment and Order has been taken into custody.

4. Applicant has preferred the present Interim Application for seeking enlargement on bail in Criminal Appeal No.625 of 2021 pending in this Court.

5. The gist of the prosecution case relevant for consideration of the present Interim Application is as follows:-

5.1. First informant Prakash Dagadu Karpe filed First Information Report (for short “**FIR**”) dated 04.10.2006 in which he stated that on 04.10.2006 at about 10:30 a.m. he alongwith Suresh Marne, Vikas Mohol and Sandip Mohol were travelling in a Scorpio jeep (vehicle) to Pune from their village Mutha. Sandip Mohol was the sarpanch of village Mutha as also Vice President of General Kamgar Union of

Nationalist Congress Party; Vikas Mohol was driving the vehicle and Suresh Marne was sitting next to him; in the middle row, initially first informant was seated next to Sandip Mohol. While travelling, their vehicle halted near Vanaz Company at Paud road when Ramesh Bhosale joined them; he sat besides the driver whereas Suresh Marne came and occupied the middle row seat behind the driver. Thus, on the middle seat first informant was seated in the middle with Sandip Mohol on his left and Suresh Marne on his right. It is stated that they were proceeding to Pune to meet Deepak Karpe, cousin brother of Sandip Mohol at Shaniwarpeth, Pune.

5.2. Incident occurred at 11:30 a.m.; the vehicle stopped at a traffic signal near Paud Phata flyover; at that time 7 – 8 persons on 3 - 4 motorcycles came from behind and parked their motorcycles on the road; they were armed with sickles, choppers and knives; accused No.1 and accused No.7 came towards the left side of the vehicle; accused No.1 was wearing a helmet and holding pistol in his right hand; Accused No.1 fired on the glass of the window pane on the left side of the vehicle where Sandip Mohol was seated, whereas the other accused namely Ganesh Marne, Nilesh Mazire, Anil Khilare, Santosh Lande and others broke the rear side glass on the driver's side with sickles, chopper and knives. Accused No.1 fired six bullets on the chest, abdomen, waist and left hand of Sandip Mohol; at that time

Ramesh Bhosale got down from the vehicle and accused No.1 attempted to fire bullet on him, but the pistol did not open fire. The assailants thereafter fled the scene of the crime.

5.3. Ramesh Bhosale, boarded the vehicle and proceeded in the same vehicle towards Sanjivan Hospital; Sandip Mohol succumbed to his injuries in the hospital.

5.4. It is stated in the FIR that accused No.1 – Sachin Pote and accused No.7 - Ganesh Marne were unhappy because deceased Sandip Mohol was appointed Vice President of General Kamgar Union of Nationalist Congress Party and therefore had a grudge against him.

5.5. On 07.10.2006, accused Nos.1 to 4 were arrested whereas other accused including the present Applicant were subsequently.

6. During the course of investigation, Investigating Officer (for short “IO”) received information that number of offences are registered against accused; that they are members of an organized crime syndicate. Hence on 20.12.2006 IO forwarded a proposal for invocation of the provisions of MCOC Act to the Additional Commissioner of Police (Crimes); prior approval under Section 23(1) (a) of the Act was granted on 31.12.2006 and subsequently the Commissioner of Police, Pune accorded sanction under Section 23(2) of the said Act. Chargesheet was filed before the learned Special Court.

7. During investigation, it was revealed that the killing of Sandip Mohol was linked to the murder of one Anil Marne and it was suspected that deceased Sandip Mohol was behind the said murder; hence, in order to take revenge of his murder, the accused hatched a conspiracy to commit murder of Sandip Mohol.

8. As stated above, three eye witnesses namely the first informant - PW-30, PW-24 and PW-26 i.e. the occupants of the vehicle were examined by prosecution and in their substantive evidence they have named the Applicant as being one of the person who was present at the scene of offence. Applicant has pleaded that when the FIR was filed, his name was not even mentioned in the FIR and despite which he was later arrested and made an accused in the present case; that there were four police personnel at the alleged spot of incident who had witnessed the incident in a busy traffic junction and despite that no FIR was lodged by them after witnessing the incident and therefore material question arises about their role and conduct at the scene of crime which creates suspicion and doubt about the presence of accused who were arrested and more specifically the present Applicant; that Ramesh Bhosale who was seated next to the driver in the vehicle had actually got out of the vehicle and had hence seen all assailants; but Ramesh Bhosale was not examined by the prosecution; that recovery of weapon at the instance of the Applicant is not proved

and its nexus is not proved with the Applicant. That, it is the prosecution's case that accused No.1 - Sachin Pote and accused No.7 - Ganesh Marne were having a previous history of quarrel with Sandip Mohol (deceased) and despite it accused No.7 - Ganesh Marne participating and being present at the scene of crime, the learned Trial Court has acquitted Ganesh Marne from the crime; that PW-12 and PW-13 are police personnel present on duty at the traffic signal near Paud Phata flyover and witnessed the incident and it is ironical that they have not identified the accused No.1; that PW-13 has infact identified the Applicant during the test identification parade.

9. On perusal of the above, it is further seen that the occupants in the vehicle who are eye witnesses to the crime i.e. PW-30 the first informant, PW-24 and PW-26 have not named the Applicant in their substantial evidence as the person who was seen present at the scene of offence. It is PW-13, PW-10 who have identified Applicant at the time of test identification parade, so also in the Court.

10. PW-13 in his substantive evidence has stated that on the date and time of the incident, he saw 5 - 6 persons attacking the Scorpio with weapons like choppers and sattur. They broke the glasses of the vehicle and while he was approaching the said vehicle, he heard the sound of fire arm towards the said vehicle from left side. He has further deposed that he had seen accused No.2 and accused No.11

(Applicant/Appellant) breaking the glass of the vehicle at the time of occurrence of the incident and therefore, he identified those accused persons in the Court. It is to be noted here that the said witness has not attributed any further overt act apart from the Applicant's presence at the scene of offence and his participation in breaking of the glass of the vehicle.

11. It is to be further noted that the Trial Court has discarded recovery of weapons i.e. sickle under Section 27 of the Evidence Act at the instance of the Applicant/Appellant in presence of PW-58. As the Trial Court has discarded the same, at this stage, we need not delve upon it.

12. It *prima facie* appears that except PW-13, no other witness has attributed any overt act to Applicant. As noted earlier, the inmates of the vehicle namely PW-30, PW-14, PW-24 and PW-26 have not named or have attributed any overt act to Applicant in the present crime.

13. Record further indicates that, Applicant was released on bail during pendency of the trial from October 2007 till the date of pronouncement of the impugned Judgment and Order dated 22.07.2021.

14. In view of the above, during the pendency of Appeal, the substantive sentence imposed upon Applicant can be suspended and

he can be released on bail.

15. Hence, the following order:-

- (i) During the pendency of Appeal, the substantive sentence imposed upon the Applicant is suspended and he is released on bail on his furnishing P.R. Bond in the sum of Rs.50,000/- with one or two local solvent sureties in the like amount;
- (ii) During the pendency of Appeal, the Applicant shall report to Kothrud Police Station, Pune on every first Monday of every third month i.e. 4 times in a year between 11:00 a.m. to 01:00 p.m.;
- (iii) Applicant shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;
- (iv) If there are two consecutive defaults in marking presence as directed above, in that event the prosecution would be at liberty to file an application seeking cancellation of bail of Applicant.

16. The present Interim Application is allowed in the aforesaid terms and is accordingly disposed of.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]

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RAVINDRA
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AMBERKAR
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