

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 191 OF 2022

Akshay Rajendra Parache ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
CRIMINAL BAIL APPLICATION NO. 3090 OF 2021

Harsh Kishor Babu ...Applicant
Versus
The State of Maharashtra ...Respondent

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Mr. Aniket Vagal a/w Mr. Kunal Pednekar, Advocate for the Applicant in Bail Application No.191 of 2022.

Mr. Hitesh Shah, Advocate for the Applicant in Bail Application No.3090 of 2021.

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

CORAM : PRAKASH D. NAIK, J.

DATE : 20th OCTOBER, 2022.

P.C.

1. The applicants in both the applications were arrested in connection with C.R. No.555 of 2020 registered with Upanagar Police Station, Nashik for offences under Sections 302, 395, 397, 143, 147, 148, 149 of Indian Penal Code (for short 'IPC').

2. The First Information Report (for short 'FIR') was lodged by Rameshwar Sitaram Sisode on 16th November, 2020. It is alleged that the cousin of complainant Yogesh Chayal had visited

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complainant's house about one and half year ago. At that time they saw Harsh @ Tonu Mhaske and others committing theft of petrol from the motorcycle. The complainant and Yogesh chased them. The accused ran away. Harsh @ Tonu Mhaske has formed a gang and the members of gang are indulging in robbery, theft and extortion. Since the complainant and Yogesh Chayal had chased them as stated above they had a grudge against the complainant and his cousin Yogesh Chayal. Sahil Mhaske, Udesch Chandel, Babu Maniyar, Raju Kerala and others had assaulted the complainant with weapons. There was a quarrel between Yogesh and Tonu Mhaske and at that time the accused had caused damage to the motorcycle of Yogesh Chayal. Police complaint was lodged in respect to the said incident. On 15th November, 2020 the complainant received a call and the caller had informed him that some persons are assaulting Yogesh with weapons. Complainant rushed to the spot. He saw Tonu Paikrao, Sattu Rajput, Maruti Ghorpade, Yogesh Bodke, Sahil, Bhurya and others assaulting Yogesh by knife and sickle. The assailants than ran away. Injured was taken to hospital. However, he was declared dead. FIR was registered. During the course of investigation approval was sought for invoking the provisions of MCOC Act and on granting approval Section 3(1)(i), (ii), 3(2), 3(3) and 3(4) of MCOC Act, 1999 were invoked. Investigation was

completed. Sanction was granted for prosecution under the MCOC Act. Charge-sheet was filed.

3. The applicants preferred applications for bail before the Special Court under MCOC Act. The applications were rejected.

4. On perusal of charge-sheet it is evident that the statements of various eye witnesses were recorded. Several persons were arrested. Confessional statement of Yogesh Bodke, Sahil Mhaske and Kalam Salim were recorded under Section 18 of MCOC Act.

5. Learned Advocate for the applicants submitted that there is no evidence to show the involvement of the applicants in the crime. Provisions of MCOC cannot be applied against the applicants. No role of assault is attributed to the applicants. There is no evidence to show that the applicants were present at the place of incident. The confessional statement of the co-accused is vague. There is no evidence to show that the applicants have committed any crime as a member of crime syndicate headed by the co-accused. Charge-sheet is filed. The applicants are in custody for substantial period of time.

6. Learned APP submitted that the involvement is apparent from the confessional statements of the co-accused. The offence is of serious nature. Provisions of MCOC Act is invoked against the

accused. Rigours of Section 21(4) are attracted. Statements of Suraj Kumawat and Monu Warma refers to presence of the applicants at the place of incident. The victim was brutally assaulted with weapons. The applicants were the part of plan to assault the victim. The gang leader had committed several crimes. He had formed the crime syndicate and indulging in activities such as theft, robbery and extortion. Three other cases are registered against the applicant Akashay Parache with Upanagar Police Station, which are pending in the Court.

6. The applicants are not named by any eye witnesses in their statements as assailants or present at the scene of offence. There is no evidence that the applicants had participated in the assault. The statement of Monu Sanjay Warma dated 22nd November, 2020 mentions that the applicants were present near the place of incident on the date of assault. Statement of Suraj Mukund Kumawat dated 22nd November, 2020 also mentions that the applicants were standing near the place of incident. However, both these witnesses have not attributed any role to the applicants. It is not stated that they were armed with any weapon and had participated in the assault. Name of the co-accused Shiban Shafi Shaikh was also referred by Monu Warma and Suraj Kumawat as the person who

were present at the scene of offence. Shibani Shafi Shaikh has been granted bail by this Court vide order dated 11th August, 2022 passed in Bail Application No.3804 of 2021. This Court had also dealt with the objection of the prosecution about invoking the provisions of MCOC Act and observed that for lack of evidence the restriction under Section 21(4) of MCOC Act will not be applicable for refusing bail to the said accused. It was also observed that the only material against Shibani Shaikh is the statement of Monu Warma. No eye witnesses have stated about the presence of the said accused as one of the friend of assailants who was present to render help, if required. The prosecution case hinges upon the statement of the said witnesses. The version of Monu Warma and Suraj Kumawat is identical against the applicants and co-accused Shibani Shaikh. The confessional statement of Yogesh Bodke refers to the fact that the applicant Akshay Parache and the co-accused Shibani Shaikh and some others were supposed to be around the place of incident to backup the assault. However, the statement does not mention that they were present at the time of assault to support the assailants. The confessional statement of Kalam Salim Rahim does not attribute any role to the applicants. The confessional statement of Sahil Mhaske also does not attribute any role to the applicants.

7. Considering the aforesaid circumstances, the embargo under Section 21(4) of the MCOC Act would not deprive the applicants from being released on bail. The case for grant of bail is made out.

ORDER

- i.** Criminal Bail Application No. 191 of 2022 and Criminal Bail Application No.3090 of 2021 are allowed;
- ii.** The applicants are directed to be released on bail in connection with C.R. No.555 of 2020 registered with Upanagar Police Station, Nashik on executing PR. Bond in the sum of Rs.50,000/- each with one or more sureties in the like amount;
- iii.** The applicants 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;
- iv.** The applicants shall not tamper with the evidence or give threat or inducement to any of the prosecution witnesses.
- v.** The applicants shall not contact any of the co-accused and indulge in the activities identical to the one for which he has been arraigned in this case.
- vi.** The applicants shall furnish their permanent residential address and contact details to the police Inspector, Upanagar Police Station, within a period of one week of their release from the prison, and intimate the change, if any.
- vii.** The applicants shall attend Trial Court regularly on the date of hearing of the case unless exempted by the Court for some reason.

viii. By way of abundant caution, it is clarified that the observations herein above 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 applicants or co-accused and the learned Special Judge shall not be influenced by any of the observations in further proceedings in the Special Case arising out of C.R.No.555 of 2020.

ix. Applications stand disposed of accordingly.

[PRAKASH D. NAIK, J.]