

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**BAIL APPLICATION NO.1755 OF 2020**

Mangesh Jaishankar Pandey @ Vikas .. Applicant  
Jaiprakash Pandey

**Versus**

The State of Maharashtra .. Respondent

**WITH**

**BAIL APPLICATION NO.3566 OF 2021**

Jiten Garsiya @ Jitlya .. Applicant

**Versus**

The State of Maharashtra .. Respondent

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Mr.Sunil R. Pandey for the Applicant in BA/1755/20.

Mr.Aditya Sharma with Ms.Priya Maurya for the Applicant in  
BA/3566/21.

Ms.Veera Shinde, A.P.P. for the State/Respondent.

PI M. L.Chalke attached to Kurar Police Station, present.

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**CORAM: BHARATI DANGRE, J.**

**DATED : 07<sup>th</sup> OCTOBER, 2022**

**P.C:-**

1. The applicants in the two distinct applications face accusations in C.R.61 of 2020, which invoke the offences punishable under Sections 307, 387, 506(2), 120-B read with

Section 34 of IPC, Sections 3, 25 and 27 of the Arms Act and Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act, registered with Kurar Police Station. They are arraigned as accused Nos.2 and 3 and came to be arrested on 04/02/2020. On completion of investigation, charge-sheet has been filed and they are being tried in MCOC Special Case No.576 of 2020.

Till date, no charge is framed and they continue to remain incarcerated.

2. Heard learned counsel for the applicants, learned A.P.P. for the State and perused the affidavit, which is filed on record, justifying the incarceration of the applicants in the wake of the charges levelled against them.

The subject C.R. came to be filed on a complaint filed by one Mukesh Sharma, stating that he is working as a Salesman in a Medical Store and Book Centre and while he was present in the shop, one person, whose face was covered, came on the spot and fired a shot from his countrymade pistol, which hit the glass of the shop and it got shattered. The complainant rescued himself and the said unknown person left the shop. One envelope was found, where there was mention of one Uday Pathak gang and on the first page of the envelope, it was scribed that, the Pathak Gang requires Rs.5 crores, failing which, they would be killed.

3. When specifically asked, on what basis, Section 307 of IPC has been invoked, learned A.P.P. gave an evasive reply that gun fire could have killed someone and, therefore, Section 307

has been invoked. In any case, the focus of the prosecution is on the extortion part of the crime, but from whom, the money is sought be extorted is also not clear. Merely because, there is a reference of Pathak Gang, it appears that the present applicants are arraigned as accused on the basis that they are the one, who are creating reign of terror in the locality, as the gang leader Pathak is behind bar, since 2011 in connection with C.R.No.129 of 2011. The applicants are alleged to be acting at the instance of the said gang leader and are directed to maintain his supremacy in the area.

It may be true that the against the gang leader Uday Pathaik, 16 charge-sheets have been filed, but as far as the involvement of the present applicants in the subject C.R. is concerned, though the learned A.P.P. would rely upon the statements of one Dharma @ Ganya Ghadge and Pawan Choube, it can be seen that the statements are as vague as it could be, as said Dharma refers to the friendship with Jitendra (accused No.3) and states that they used to consume liquor together. He refers to him to be his friend and gives the incidents occurred in December 2019 and January, 2020 when they had consumed liquor together. Further, reference is made to one Santosh, who flaunted the weapon given to him by one Udaybhai. He then states that on one occasion, when they all were drunk, one Babu Chintale pulled the weapon from Santosh @ Bhaiya and fired it in the air and shouted 'Uday Bhai Jindabad'. Then, vaguely he narrates that on 01/02/2020, he accompanied with Jitendra, had gone to Arthur Road Jail to meet Udaybahi and they were asked to report to the Court. What is incriminating in the said statement is not understood.

Similar role is attributed to accused No.2-Mangesh, who is also known as Vikas.

4. These are the only two statements, which the learned A.P.P. has pulled from the entire charge-sheet, which makes some reference to the two accused persons, in which I do not find a single incriminating circumstance against the present applicants.

In the affidavit filed by the Assistant Commissioner of Police, reliance is placed on the statements of these witnesses and it is stated that there are four eye witnesses, who have witnessed the commission of offence. It is not clear, which offence the witnesses are referring to, as alongwith the other witnesses, it is the case of the applicant that they are the residents of same locality and, hence, they had a reason to be present in the locality. They were not armed with weapons nor they are the assailants nor did they fire. The specific statement made in the affidavit that they actively participated in the offence and played a specific role, as assigned to them by the gang leader, is also without any supporting material compiled in the charge-sheet, substantiating the said allegation. The commonality of the crime as well as their involvement as a member of the organised crime syndicate is also conspicuously absent, except the jargon, which is to be found in para 34 of the affidavit. The connection between the applicants and the gang leader, who remained incarcerated for more than a decade, is also not established.

5. In the wake of the aforesaid circumstances, since the prosecution has, *prima facie*, failed to justify the invocation of MCOC Act, though they may take the consequences of the act, when they will be tried for the said offence, the applicants deserve their release on bail.

6. Needless to state that the observations made above are, *prima facie*, in nature and limited to the extent of adjudication of the present application and the learned Judge trying the applicants for the offences with which they are charged, shall not get influenced by the above observations, in any manner.

: **ORDER** :

(a) Application is allowed.

(b) Applicant -Mangesh Jaishankar Pandey @ Vikas Jaiprakash Pandey (**Bail Application No.1755 of 2020**) and applicant- Jiten Garsiya @ Jitlya (**Bail Application No.3566 of 2021**) shall be released on bail in connection with C.R.No.61 of 2020 registered with Kurar Police Station on furnishing P.R. Bond to the extent of Rs.25,000/- each, with one or two sureties in the like amount.

The applicants shall be released on cash bail for a period of six weeks in lieu of sureties. During the said period, they shall arrange for the surties.

(c) The applicants shall mark their attendance before the concerned police station on first Monday of every month between 10.00 a.m. to 12 noon till framing of charge and, thereafter, shall abide by the directions issued by the trial Court.

(d) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicants shall furnish their contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

**( SMT. BHARATI DANGRE, J.)**