

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

CRIMINAL APPEAL NO. 1661 OF 2019

Amol Ashok Mali

... Appellant

Versus

The State of Maharashtra and Anr.

... Respondents

...

Mr. Ashok Mundargi, Senior Advocate i/by Mr. Tejas Khilage, for the Appellant.

Mr. A. R. Kapadnis, A.P.P for the Respondent-State.

Mr. Shantanu R. Phanse, Advocate (appointed) for respondent No.2

...

***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

DATE : AUGUST 18, 2022

ORDER (Per : SHARMILA U. DESHMUKH, J,) :

1. By this appeal, preferred under Section 14A of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, “the SC ST Act”), the Appellant seeks to quash and set aside the order of the learned Special Judge, Pune dated 04.09.2018 and prays, that the Appellant be enlarged on bail in

connection with CR No.71 of 2016, registered with the Shahpur Police Station, Ichalkaranji on 20.04.2016, for the offences punishable under Sections 302, 201, 364, 120-B, 452, r/w 34 of the Indian Penal Code (for short, “IPC”), under Sections 3 (2) (v) and 3 (2) (va) of the SC ST Act, and, under Sections 3 (1)(i), 3(1)(ii), 3 (2), 3 (4) of the Maharashtra Control of Organised Crimes Act, 1999 (for short, MCOC Act’).

2. Heard Mr. Mundargi, learned Senior Counsel, appearing for the appellant; Mr. A.R. Kapadnis, learned APP for the respondent No.1-State and Mr. Shantanu R. Phanse, learned appointed Advocate for respondent No.2.

3. Mr. Mundargi, learned Senior Counsel submits that there is no material on record as against the Appellant to connect him with the alleged offences; that the FIR lodged by the wife of the deceased discloses the name of Suraj Shirke and two unknown persons; that the appellant was in Hadapsar, Pune at the time of the incident whereas, the body of the deceased was found in the State of Karnataka; that there is no evidence of conspiracy; that the alleged

motive of the year 2012 cannot be believed, inasmuch as, in the said Court proceeding of the year 2012 wherein, the Appellant was an accused and the deceased, a witness (hostile), the said case had infact, ended in an acquittal. Mr. Mundargi submits that in the present case the co-accused - Anil Mole, Amol Kondare, Rahul Ekonde and Toufique Shirguppe have been granted bail, and as such seeks bail even on ground of parity.

4. Learned Senior Counsel appearing for the Appellant also relied on the judgment of the Apex Court in the case of **Shaheen Welfare Association *versus* Union of India and others**¹, and also sought bail on the ground of delay, in the commencement of the trial.

5. Mr. Kapadnis, learned APP vehemently opposes the Appeal and submits that there are ten cases registered against the present Appellant; that as a gang-leader, the Appellant is running an organised crime syndicate and that he has created fear in the neighbourhood area; that the motive is clear, i.e. the incident of

¹ (1996) 2 SCC 616

causing damage to the bike of Akshay Bhatle and despite Ajit (deceased) promising to pay compensation for the damage, he had failed to pay the same. He submits that the statements of witnesses consistently point to the complicity of the Appellant.

6. Learned counsel appearing for the respondent No.2 has adopted the submissions of the learned APP and submits that the involvement of the Appellant in the case, is not an afterthought, and that the same is evident from the fact, that although, the dead body was found on 22.04.2016, the police had recorded the statements of witnesses on 21.04.2016, in which the appellant has been named and as such the same shows the complicity of the Appellant. He submits that co-accused No.2–Suraj Shirke and accused No.3-Ajay Kulkarni have not been granted bail and that the said persons were acting at the behest of the appellant, the gang leader. Learned Counsel for the respondent No.2 relied upon the judgment in the case of **State of Maharashtra v/s Vishwanath Maranna Shetty**².

7. Perused the papers with the assistance of the learned counsel appearing for the parties.

² (2012) 10 SCC 561

8. The prosecution case, as revealed from the First Information Report (for short, “FIR”) dated 20.04.2016 lodged by Dipali Ajit Waghmare (wife of deceased) is; that on 19.04.2016 at about 12: 30 p.m., one Suraj Shirke alongwith two unknown persons entered the house of the deceased and started scattering the household articles; they disclosed that they were Appellant’s persons and, that the Appellant had told them to bring Ajit Waghmare (deceased); that the said persons forcibly took Ajit on their motorcycle; that as Ajit did not return till the next day i.e. 20.04.2016, pursuant to which she lodged an FIR as against the Appellant and his accomplices-Suraj Shirke and two unknown persons. In the FIR, the Complainant alleged that the Appellant and his associates, had abducted her husband – Ajit with the intention to murder him.

9. On the basis of the FIR, CR No.71 of 2016 came to be registered with the Shahpur Police Station, for the alleged offences punishable under Sections 364 and 452 of the IPC, as against the Appellant, Suraj Shirke and two unknown persons. It appears that

during the course of investigation, on 22.04.2016, the dead body of Ajit was found in the State of Karnataka. During the course of investigation, the present appellant alongwith seven other accused were arrested. The provisions of Maharashtra Control of Organised Crime Act (MCOC Act) were also invoked.

10. A perusal of the statement of **Datta Maruti Waghmode**, reveals that on 19.04.2016 at about 12:30 p.m., he had seen three persons enter the house of Ajit; that he had heard loud conversation between Ajit and the said persons; that thereafter the said three persons came out of the house with Ajit; that when he went near the house of Ajit, he heard the said persons tell Ajit that Amol Bhau (appellant) has asked them to pick him up and that Ajit should quietly come with them. It is further alleged that when the Complainant tried to stop the said three persons, she was pushed aside and the said three persons took away Ajit (deceased) on their motorcycle and went in the direction of Shahpur.

11. The statement of **Shivraj Baban Daud**, reveals that in the year 2006, Sachin @ Pintu Jadhav, a friend of Ajit, was

murdered by the Appellant, Kiran Kashid and Ajay Kulkarni, and, in the said Court case, Ajit (deceased) was a witness and therefore the appellant had a grouse against Ajit. It is further alleged that during the “Tardal Yatra” there was a fight between the friends of Ajit- Vinayak Jadhav, Raju Patil and Mahesh Hegde, and one Akshay Bhatle, in which the friends of Ajit (deceased) damaged the bike of Akshay Bhatle; that Ajit (deceased) promised to pay for the damage caused to the bike of Akshay Bhatle; that Ajit (deceased) did not pay the damage and hence at the instance of the appellant, his accomplices-Suraj Shirke, Ajay Kulkarni, Amol Kondare, Taufik Shirgupe, Rahul Ekonde and Akshay Kalle assaulted Raju Patil and Mahesh Hegde; that 15 days prior thereto, he was speaking to Ajit (deceased) and Ankush Garad, at about 05:30 p.m. near the J.K. Nagar Chowk, at that time, Suraj Shirke came and told Ajit that Amol Bhau (appellant) had called Ajit (deceased); that he, Ankush and Ajit (deceased) went with Suraj Shirke and met the Appellant in the open space behind the office of Appellant; that at that time Ajay Kulkarni, Rahul Ekonde and Anil Mole were present; that the Appellant threatened Ajit (deceased) with dire consequences in the

event Ajit (deceased) did not pay the money for the damage caused to the motorcycle of Akshay Bhatle; that on 19.04.2016, he was told by his friend Yogesh Kamble that Ankush is waiting for them at Narsimhawadi; that when they reached Narsimhawadi, Ankush Garad told them that at the instance of the Appellant, Amol Kondare and Akshay Kalle had picked him up and the boys of the Appellant had also picked up Ajit (deceased).

12. The statement of witness - **Ankush Garad** reveals that in the year 2006, Sachin @ Pintu Jadhav, was murdered by the Appellant, Kiran Kashid and Ajay Kulkarni; that Ajit (deceased) had intervened to save Sachin and was also assaulted; that in the said Court case, Ajit (deceased) was a witness and therefore the appellant had a grouse against him. It is further alleged that in the year 2012, he was informed by Ajit (deceased) and his family members that Ajit's brother was picked up by the Appellant's brother and father, and, friends of the Appellant and was threatened that Ajit should not give evidence against Amol Bhau (appellant) or else Ajit (deceased) will not be left alive; that he was told that Ajit (deceased)

had been forcibly taken on a stretcher to give evidence in the Court, in the murder case of Sachin; that during the “Tardal Yatra” there was the fight between friends of Ajit- Vinayak Jadhav, Raju Patil and Mahesh Hegde, and one Akshay Bhatle, in which the friends of Ajit (deceased) had damaged the bike of Akshay Bhatle; that on 22.03.2016 at about 6.00 p.m., the accomplices of the Appellant- Suraj Shirke, Ajay Kulkarni, Amol Kondare, Taufiq Shirguppe, Rahul Ekonde, Akshay Kalle, etc. were beating up one Raju Patil, hence, Ankush and Ajit (deceased) intervened to save Raju Patil, when Ajit (deceased) was told not to interfere in the said fight, as the said Raju Patil was abusing Amol Bhau (appellant); that Ajit (deceased) was asked to bring Mahesh Hegde, and thereafter, Mahesh Hegde and his father were assaulted by Suraj Shirke, Ajay Kulkarni and Amol Kondare and were threatened by Amol Kondare that Amol Bhau (appellant) had told that they should pay the money for the damage to the motorcycle within a period of two days.

It is further alleged by the said witness, that few days after the aforesaid incident, he, Ajit (deceased) and Shivraj Daud

were standing and talking near the J.K. Nagar Chowk, when Suraj Shirke came and told Ajit (deceased) that Amol Bhau (Appellant) had called him. Thereafter, Ajit (deceased), Shivraj and he went with Suraj Shirke and met the Appellant; that at that time, alongwith the Appellant, Anil Mole, Ajay Kulkarni, Rahul Kalle were present; that the Appellant threatened Ajit (deceased) with dire consequences, if the money for the damage caused to the motorcycle of Akshay Bhatle was not paid within two days.

13. The statement of witness **Ankush Garad** reveals that on 19.04.2016, in the afternoon, the accomplices of the Appellant i.e. Amol Kondare and Akshay Kalle came to his house and forcibly took him saying that he was called by the Appellant, since the money for damage caused to the motorcycle had not yet been paid. That on the way, Amol Kondare stopped the bike and called up one Bapu Dada and told him that Ankush has been brought; that thereafter, they took him to Narsimhawadi, where Amol Kondare called up Suraj and told him they have got Ankush and inquired where to bring him; that after disconnecting the phone,

Amol Kondare told Akshay Kalle that Ankush has to be taken to Kagwadla; that on reaching Kagwadla, Amol Kondare tried to call up Suraj but since the call could not be connected, he called up one Bapu Dada and told him that he has brought Ankush Garad; that after the call, Amol Kondare dropped him at Narsimhawadi saying that he is saved.

14. Similarly, a perusal of the statement of witness - **Akash @ Akshay Sanjay Bhatle**, reveals that on 16.03.2016 Vinayak Jadhav, Raju Patil and Mahesh Hegde had assaulted him and damaged his motorcycle; that he had informed Suraj Shirke about the damage caused to his motorcycle; that Suraj Shirke had called Ajit (deceased) and told him that since the motorcycle has been damaged by his boys, Ajit (deceased) should pay the money for the damage; that Ajit refused to pay and Suraj Shirke told Akshay that the said incident will be informed to the Appellant, and through the Appellant, Ajit (deceased) will be called and money recovered and stating thus, Suraj Shirke told Akshay that they will go to meet the Appellant and asked Akshay to meet him

after two days ; that on 22.03.2016 he and Suraj Shirke went to the Appellant and requested the Appellant to ensure that the money for the damage caused to the motorcycle bike is paid; that the Appellant told Suraj Shirke to take the boys in the evening and bring Ajit (deceased) and his friends and to recover the money for the damage caused to the motorcycle; that since the money was not received, he enquired with Suraj Shirke, who told him that as instructed by Appellant (Amol Bhau)- Ajit Waghmare, Mahesh Hegde, Raja Patil, and Ankush Garad were assaulted by Suraj Shirke, Amol Kondare, Rahul and Ajay Kulkarni and given an ultimatum to pay the money and that the money would soon be paid.

15. A perusal of the statement of **Sanjay Ganpati Pol** (bar owner) reveals that on 19.04.2016 at about 1:30 p.m., Anil Mole alongwith five other persons, including a handicapped boy (Appellant was handicapped) had come to his Bar; that while serving the order, he noticed that Anil Mole and others were abusing the handicapped boy; that thereafter, they left the permit room. The bar owner has identified Anil Mole and four other boys viz. Suraj Shirke, Ajay Kulkarni, Basaveshwar @ Rahul Ekonde and

Taufiq Shirguppe and also identified Ajit (deceased) as the handicapped boy from the photograph shown to him.

16. Considering the aforesaid statements of the witnesses, it appears that the appellant is the gang leader; and that there was dispute between Ajit (deceased) and the Appellant, regarding payment of compensation for the damage caused to the motorcycle of Akshay Bhatle. The statement of Akshay Bhatle reveals that the dispute about the payment of compensation for the damage caused to his motorcycle was being handled by the Appellant and that the compensation was being sought by the Appellant from Ajit (deceased) and threats had been issued by the Appellant to Ajit (deceased).

17. A perusal of the FIR lodged by the wife of the deceased, shows that it was lodged, as against the Appellant, Suraj Shirke and two unknown persons. The consistent statements of the witnesses, *prima facie*, reveals the complicity of the Appellant, inasmuch as, the statements show that threats were issued by the co-accused at the instance of the Appellant and, by the Appellant himself, for

payment of compensation for the damage caused to the motorcycle and that the abduction of Ajit (deceased) was also at the instance of the Appellant. The alleged motive for the abduction is the non payment of the compensation for the damage caused to the bike of Akshay Bhatle, which as alleged by Akshay Bhatle himself, was being handled by the Appellant.

18. The truthfulness or otherwise of the said statements will have to be tested during the trial. At this stage, *prima facie*, having perused the statements, the complicity of the Appellant in the offences is evident. At this stage, it is not necessary to conduct a mini trial and come to conclusive finding about the guilt of the appellant, lest the trial is prejudiced. It is also pertinent to note that the statements of the witnesses recorded on 21.04.2016 showing the complicity of the Appellant, was recorded prior to the finding of the dead body of the deceased, and as such was not an afterthought.

19. Considering the invocation of the MCOC Act, in the present case, while considering the bail application, Section 21 (4)

of the MCOC Act, will have to be taken into consideration. It is therefore necessary to consider as to :

- (a) whether there are reasonable grounds for believing that the Appellant is not guilty of the offence; AND
- (b) whether the Appellant is not likely to commit any offence while on bail.

. We are unable to record a satisfaction that *prima facie*, the Appellant is not guilty of the alleged offences, having regard to the statements of witnesses. As far as the second condition is concerned, it appears that in 2012, the Appellant had forcibly taken Ajit (deceased) to the Court on a stretcher to give evidence, under a threat to his life. Although the said allegation is disputed by the learned Senior Counsel for the appellant, it is not in dispute, that Ajit (deceased) had turned hostile and had deposed in favour of the Appellant, in the said case. Considering the past history, and the criminal antecedents of the Appellant, in our opinion, the likelihood of the Appellant committing an offence, if granted bail, cannot be ruled out. Even otherwise, having regard to the past, the possibility

of the Appellant, tampering with the witnesses, also cannot be ruled out.

20. As far as parity with some other co-accused is concerned, the other co-accused were granted bail prior to the invocation of MCOC and hence, the ground of parity is not available to the Appellant.

21. Considering the aforesaid, the appellant's appeal seeking bail stands dismissed.

22. We are informed, that charges have not been framed till date, in the case i.e. MCOC Case No.28 of 2016. However, having regard to the fact, that the Appellant is in custody for the last six years, we deem it appropriate to expedite the trial of the Appellant. Needless to state, that the observations made herein-above, are *prima facie*, for the purpose of deciding this application and hence, the trial Court to conduct the case on its own merits, uninfluenced by the same. Accordingly, we pass the following order.

ORDER

- (i) The Criminal Appeal No.1661 of 2019 is hereby dismissed.
- (ii) The trial of MCOC Case No.28 of 2016 pending before the learned Additional Special Judge, Pune is expedited. The learned Judge to conclude the trial as expeditiously as possible and in any event by 31st December, 2023.

23. The Criminal Appeal is accordingly disposed of.

24. All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.