

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3578 OF 2021

SAGAR PANDURANG BHILARE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Shailesh Chavan i/b. Mr.Shrikant Panhale, Advocate for the Applicant.

Mr.Ameet Palkar, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 14th DECEMBER 2021
PRONOUNCED ON : 20th JANUARY 2022**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.53 of 2016 registered with Police Station Vaduj, for offences punishable under Sections 394, 397 read with 34 of the

AVK

1/8

Indian Penal Code (IPC), under Sections 27, 3(23), 3(1) and 4 of the Arms Act and under Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime, 1999 (MCOC Act).

2 The First Information Report (FIR) shows that on 6th March 2016 informant and his two other employees were proceeding towards Vaduj Village by Vehicle No.MH 11 BL 6663 belonging to D.K.Trading Company to supply oil and groundnut seeds. They had collected cash of Rs.2,40,200/- after supplying certain products to retailers. Informant had with him cash of Rs.2,25,000/- in his bag and Rs.15,200/- in his pocket.

3 According to prosecution, the informant and others had stopped the vehicle at Satewadi to supply products to one Sanjay Bote. In the meantime, four unknown persons came. One of them pointed a pistol at informant and other three assaulted him. They also tried to snatch away the bag containing Rs.2,25,000/-. However, the informant held the bag tight and thus foiled their attempt. One boy from those unknown persons

then removed cash of Rs.15,200/- from the pocket of informant. Somehow the informant rescued himself and ran towards the house of Sanjay Bote. It is also seen from the record and more particularly from the statement of driver Rajendra Nidan that those four persons had also entered in the cabin of pick-up truck and assaulted him. They took the vehicle up to a community center and also demanded monies from him and when he told them that he had no monies, those persons took away some goods from the said pick-up truck. The informant, accordingly, lodged the First Information Report (FIR).

4 Mr.Shailesh Chavan, learned counsel for the applicant, submits that since the co-accused, namely, Mauli Mahaling Palse has been released on bail on 8th October 2018 by this Court (Coram : Smt.Anuja Prabhudessai, J.) and the applicant being similarly placed, is entitled to claim parity. According to learned counsel recovery has already been made and the injuries allegedly sustained by the informant and others were simple in nature. Having regard to the material on record,

the applicant deserves to be enlarged on bail, argued learned counsel.

5 Mr.Ameet Palkar, learned APP, on the other hand, opposed the submissions and submitted that the applicant was duly identified in the Test Identification Parade. There is confessional statement of co-accused along with recovery effected under Section 27 of the Indian Evidence Act. Having regard to seriousness of the offence, the applicant does not deserve to be enlarged on bail, argued learned APP.

6 Perused the investigation papers. Admittedly, the FIR and statement of driver coupled with the findings of Test Identification Parade show prima facie involvement of the applicant and others.

7 It is also alleged that applicant and others also committed offence under the relevant provisions of MCOC Act and for that purpose the prosecution has placed reliance on the

confessional statement of one Vishwajeet Shankar Shinde recorded under Section 18 of the MCOC Act. I have carefully gone through the said confessional statement. It is very much interesting to read the confessional statement. Before I read it, I may point out from the FIR as well as from the statement of the driver Rajendra Nidan that they have claimed to had been beaten by all those unknown persons which admittedly included the co-accused who allegedly gave the confessional statement. However and much to the chagrin of the prosecution, the co-accused conveniently does not attribute any role at all unto himself and rather points out guilt by fingering at others. Suffice to say, said confessional statement on the face of it is exculpatory. If this statement is excluded, the only evidence is in the form of Test Identification Parade and nothing else.

8 Apart from above, I have also gone through the Affidavit-in-Reply of the Sub-Divisional Police Officer, Dahiwadi Division, wherein at paragraph 14 criminal antecedents of the applicant have been given. The learned counsel for the applicant

has also filed on record the copies of judgments of acquittals in various criminal cases which relate to Serial Nos.17, 19, 20, 21, 22, 23, 24 and 26 of the antecedents given at paragraph 14 in the Affidavit-in-Reply. Despite those acquittals, still there are number of criminal cases which are pending against the applicant. I have also, for the time being, excluded the so called confessional statement inculcating the applicant for the reasons stated hereinabove. It is also settled law that the bail application has to be considered on its own merit and on the basis of allegations and proof in support thereof by the Court.

9 Recovery has already been effected. The case will take its own time. Having regard to the nature of material on record, I am inclined to allow the application. Hence, I pass the following order :

ORDER

- (i) Applicant – Sagar Pandurang Bhilare shall be released on bail in Crime No.53 of 2016 registered with Police Station

Vaduj, on his executing P.R.Bond in the sum of Rs.50,000/- with one or two sureties in like amount.

- (ii) The applicant shall not tamper with prosecution evidence.
- (iii) The applicant shall attend the concerned police station twice in a month commencing from 1st February 2022 i.e. on 1st and 4th Monday of every month, in between 11.00 a.m. to 1.00 p.m. till filing of the charge-sheet.
- (iv) Bail before the trial Court.
- (v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vi) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.

(vii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)