

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3613 OF 2021

Rutwik Vijay Sonawane

..Applicant

V/s.

The State of Maharashtra

..Respondent

Mr. Satyavrat Joshi i/b Nitesh Mohite for the Applicant.

Mr. Y.Y.Dabke, APP for the Respondent/State.

CORAM : C.V. BHADANG, J.

DATE : 7 MARCH 2022

P.C.

1. By this application, the Applicant-accused No. 5 is seeking bail. The Applicant along with co-accused has been chargesheeted in MCOC Case No. 689 of 2020 arising out of Crime No. 201 of 2020 registered with Police Station Haveli, District Pune, for the offence punishable under Section 307, 385, 384, 143, 147, 148, 149, 506 of IPC and Section 3 and 25 of the Arms Act.

2. The aforesaid crime is registered on the basis of the complaint lodged by Raju Sonawane on 18.05.2020. According to the first informant on 17.05.2020 at about 8.30 p.m., when he along with his family members and his friend Nikhil alias

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Khandu Chavan were at his house, three unidentified persons in the age group of 25 to 30 years came there. One of those persons handed over the phone to the informant saying that it is a call from "Bhai". On taking the call, the informant noticed that it was one Chetan Limhan alias Mama (who according to the prosecution is the gang leader). Chetan Limhan accosted the informant, as to why he has not sent money and made a demand of Rs.50,000/-, failing which threatening the informant to be killed. The informant told about the incident to his brother Rambhau Sonawane, who is his neighbourer. Subsequently, at about 10.30 p.m. to 10.45 p.m., in the same evening, five persons came to the house of the informant, which included the three unidentified persons who had come earlier. Two out of them were having pistols. They asked the informant to come out. The informant apprehending threat to his life, switched off the lights in the house and kept inside the house. It is the material allegation that those persons thereafter, fired on the door and the windows of the house of the informant. Hearing the commotion, the brother of the informant and other neighbourers came out, when those five persons fled from the spot. The informant after switching on the lights found that his friend Nikhil was lying in a pool of blood. He was carried to the hospital and it was found that a bullet was lodged in his head. Nikhil however could be saved because of treatment. On the basis of such complaint, the offence came to be registered.

3. Initially a crime under Section 307 and relevant Section for rioting and extortion were registered and subsequently, the provisions of the Maharashtra Control of Organised Crime Act, 1999 ("MCOCA Act" for short) came to be added. In this case after investigation, a chargesheet is filed.

4. I have heard the learned counsel for the Applicant and the learned APP. Perused record.

5. It is submitted by the learned counsel for the Applicant that the Applicant has been falsely implicated. It is submitted that the Applicant was arrested on 28.05.2020 and Test Identification Parade (TI Parade) was held belatedly on 18.09.2020. The learned counsel pointed out that one of the identifying witnesses namely Dattatray Mate was shown CCTV footage of the incident prior to TI Parade. In the submission of the learned counsel, the alleged identification in the TI Parade loses any significance on account of the delay in conduction of the said TI Parade and also on account of the fact that one of the identifying witnesses had an opportunity to see the CCTV footage. It is submitted that there are no criminal antecedents against the Applicant and no common offences between the members of the organised crime syndicate. He, therefore, submitted that the Applicant cannot be said to be a member of the organised crime syndicate. The learned counsel pointed out that confessional statement of the co-accused Yogesh Kamble does not name the present Applicant.

He submitted that the investigation is complete and the chargesheet is filed and the further detention of the Applicant is not warranted.

6. The learned APP has submitted that the offence is serious in which the Applicant and co-accused as members of the organised crime syndicate had fired at the house of the informant, injuring Nikhil Chavan. It is submitted that there are eye witnesses to the incident and the Applicant has been identified in CCTV footage as well as TI Parade. The learned APP pointed out that there is a recovery of a country made pistol from the Applicant on 30.05.2020. There is sufficient material to show that the assault was made on behalf of the syndicate for extortion of the amount.

7. I have considered the circumstances and the submissions made. Prima facie it appears that prior to the incident of firing which happened at 10.30 p.m. to 10.45 p.m., there were three unidentified persons, who had gone to the house of the informant at about 8.30 p.m. and the informant had spoken to the caller, who was referred to as *Bhai* and the informant had found that it was Chetan Limhan alias Mama who according to the prosecution is the gang leader. It appears that there was a demand of Rs.50,000/- made to the informant and this was followed by the incident of firing in the late night at 10.30 p.m.

to 10.45 p.m. The informant had identified, three out of 5 persons who had earlier visited his house at about 8.30 p.m. There is a transcript of the CCTV footage produced on record. It appears that the informant had deployed 4 CCTV cameras at his house and there is a recording, which is recovered and identifying witness Dattatray Mate had identified, the Applicant to be one of the persons present in the CCTV footage. There is a recovery of a country made pistol from the Applicant. The contention that the incident was not part of continuing criminal activity of the organised crime syndicate cannot prima facie be accepted. Although the co-accused Saurabh Chaniyana, Ajay Auratkar and Uday Sonawane have been granted bail by the learned Sessions Judge, the learned counsel for the Applicant in all fairness did not claim any parity with these accused. It may be mentioned that co-accused Saurabh has not been identified in TI Parade. Insofar as the co-accused Ajay Auratkar and Uday Sonawane are concerned, the learned Sessions Judge has noted that they were released on bail before of the provisions of MCOC Act were invoked.

8. Considering the over all circumstances, I do not find that this is a fit case for release of the Applicant on bail.

9. The Criminal application is accordingly rejected.

10. It is made clear that the observations herein are essentially of a prima facie nature and the learned Sessions Judge shall not be influenced by the same at the trial.

(C.V. BHADANG, J.)