

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3643 OF 2021

Subhash Kundalik Khade
versus

Applicant

The State of Maharashtra

Respondent

Mr.Priyal G. Sarda, Advocate for applicant.

Ms.PN.Dabholkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 6th October 2022

PC :

1. This is an application u/s.439 of Code of Criminal Procedure. The applicant was arrested on 17th September 2017 in connection with CR No.183 of 2017 registered with Bharti Vidypeeth Police Station. He was granted bail by order dated 3rd November 2017. Subsequently provisions of Maharashtra Control of Organized Crimes Act were applied. Hence applicant was again arrested on 16th April 2018 and since then he is in custody.

2. Initially, C.R. No. 183 of 2017, was registered on 11th April, 2017, with Bharti Vidhyapeeth Police Station, Pune, for offences punishable under Section 224 read with 34 of Indian Penal Code. The said FIR was lodged by Sanjay Chandanshiv, police head constable. He was assigned duty as Guard Amaldar incharge. It was alleged that the accused No.1 Raju Mahadeo Patre, accused No.2 Santosh Machindra Jagtap, accused No.3 Lubhya @ Santosh Chintaman Chandilkar were detained at Yerawada Central Prison. They were to be produced before the Court of Judicial Magistrate

First Class, Khandala, District-Satara on 10th April, 2017, from Yerawada Prison. They proceeded by van. They reached the Court at 14:00 p.m. The case was adjourned to 21st April, 2017. Accused were to be taken back to Yerawada prison. They proceeded towards Yerawada Jail. Accused were not handcuffed. While they reached Katraj Ghat, vehicle was stopped as accused wanted to answer nature's call. Accused got down from vehicle. They pushed police party and managed to escape in jungle by taking advantage of darkness. Police chased them but could not trace them.

3. Subsequently, First Information Report was registered with Pimpri Chinchwad Police Station, Pune, since it was revealed that the incident had occurred within the jurisdiction of said police station vide C.R. No. 352 of 2017 for the offences punishable under Sections 224, 34 of IPC. The FIR is dated 23rd June, 2017. Thereafter, Section 115 read with Sections 302, 219 and 223 read with Section 3, 5 and 25 were added. Sections 212, 216, 219, 223, 225, 414 and 419 of IPC were also added. Approval for invoking provisions of MCOC Act was granted on 8th November, 2017. Sanction was granted on 8th March, 2018, under provisions of Section 3(1)(II), 3(2), 3(3) and 3(4) of MCOC Act.

4. During the course of investigation, it was revealed that the accused Sushil Mancharkar is involved in politics. He came in contact with the gang leader Santosh @ Lubhya Chandilkar. Sushil Mancharkar wanted to liquidate Kailas Kadam. There was a conspiracy by him. The persons who escaped from the custody were contacted and contract was given to them to kill Kailas Kadam. The co-accused Sushil Mancharkar activated the proceedings in the court

at Khandala. The accused No.10 Vijay Waghmare working as Police Naik was entrusted work of allotment of police personal for taking accused persons to Courts from the jail. It was ensured that same police personals are deputed for taking accused No.1, accused No.2 and accused No.15 to the Court from the jail. The accused had appeared in the trial Court for about 11 dates. With the assistance of the police, the accused managed to flee from custody. However, subsequently, they were arrested and arraigned accused in the present case. Santosh @ Lubhya Chandilkar is involved in 22 cases. It is alleged that with the help of the said accused, Sushil Mancharkar wanted to liquidate Kailash Kadam. Confession of accused Santosh @ Lubhya Chandilkar, Raju Mahadev Patre were recorded. Thereafter, confession of Dhanraj Kamble, was recorded.

5. It is submitted that the applicant is in custody for a period of about 4 years and 8 months. The co-accused Suresh Zende is granted bail by order dated 25th August 2021 whereas Vijay Waghmare who was also Police Naik, has been granted bail by this Court vide order dated 6th December 2021. Assuming the allegations made against applicant to be true, the applicant can be prosecuted for the offence u/s.24 of MCOC Act. There are no criminal antecedents against applicant. He was working as Police Naik. Initially he was granted bail and only on account of invoking provisions of MCOC Act, he was taken in custody.

6. Learned APP submitted that case of the applicant and co-accused who were granted bail can be distinguished. The offence is of serious in nature Provisions of MCOC Act are invoked in this case.

The applicant had aided in facilitating the accused, who were involved in serious cases and working as gang, to flee from the custody of police. The act was committed by all the accused in furtherance of common intention. In view of restrictions u/s.21(4) of MCOC Act, bail should not be granted to the applicant.

7. It is not in dispute that the applicant is in custody for a period of 4 years and 8 months. It is reported that even charge has not been framed against accused. The applicant was working as Police Constable and not member of gang involved in the present crime. Some of the co-accused are granted bail. The role assigned to Suresh Zende is to make requisite arrangement of duties and to follow up entire incident. Vijay Waghmare was Police Naik working in same police station and he was allegedly the person who used to assigned the duties of policemen. There are no antecedents against applicant. The role attributed to the applicant is allegedly aiding and abetting the accused to run away from police custody. Considering all these circumstances and fact that for a substantial period of time the applicant is in custody, bail can be granted to him and Section 21(4) of MCOC Act would not be an impediment for allowing the application.

ORDER

- (i) Bail Application is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with C.R.No.352 of 2017 registered with Pimpri Police Station, Pune, on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant is permitted to furnish cash bail in the sum of

Rs.25,000/- for eight weeks;

(iv) The applicant shall attend Pimpri Police Station once in a month on every first Saturday between 11 am and 1 pm till further orders.

(PRAKASH D. NAIK, J.)

MST