

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

CRIMINAL BAIL APPLICATION NO.3556 OF 2021

Ganesh Dyaneshwar Kurhe

...Applicant

Vs.

The State of Maharashtra

... Respondent

Mr.Niranjan Mundargi i/b Mr.Satyam H. Nimbalkar for the Applicant.

Mr.S.R. Agarkar, APP for the Respondent-State.

CORAM : C.V. BHADANG, J.

DATE : 10 MARCH 2022

P.C.

. By this Application, the Applicant (Accused no.3) is seeking release on bail in MCOCA Case No.247 of 2021 arising out of Crime No.413 of 2020 of Bundgarden Police Station, Pune under Section 302, 120B, 201, 212 of Indian Penal Code, Section 3/25 of the Arms Act, Section 37(1)(3) read with Section 135 of the Maharashtra Police Act and Section 3(1)(ii), 3(2), 3(4) of the Maharashtra Control Organized Crime Act ('MCOCA' Act for short).

2. The aforesaid crime is registered on the basis of the complaint dated 5 October 2020 lodged by Vishwas Dayand Gangavane, who was working as a driver with, deceased Rajesh Haridas Kanabar. According to the prosecution there was a

dispute between the family of Accused Nos.1 and 2 and the deceased in respect of land Gat No.348 situated at Bavdhan, Pune. The predecessor of the Accused Nos.1 and 2 and members of the Kamble family had executed an agreement somewhere in the year 1989 in respect of the said land in favour of Om Waghjaie Construction of the deceased Rajesh Kanabar. However, it appears that subsequently in the year 2007 the accused Nos.1 and 2 through their Power of Attorney Holder Parshuram Nizsure had sold the land to Samrudhi Enterprises. The uncle of the Accused Nos.1 and 2 had also sold his share of the land in favour of Samrudhi Enterprises. Indisputably the deceased Rajesh Kanabar had filed a Civil Suit for getting a Sale Deed executed and for injunction which was pending before the Competent Civil Court at Pune.

3. There were Revenue proceedings pending between the parties before the Additional Collector at Pune. According to the prosecution there were attempts/meetings held for amicable settlement of the dispute between the Accused Nos.1 and 2 represented by the Applicant and the deceased, along with witnesses Rahul Patil and Amol Chavan and others. However, the Accused Nos.1 to 3 were under impression that the deceased was not favorably responding to such proposals.

4. According to the prosecution on 5 October 2020 after the deceased came out of the Collector's Office and was purchasing fruits near the gate of the State Bank of India at 2.45 p.m., the Accused No.4 Hasmukh Patel shot at deceased by a country made pistol. The deceased was carried to the hospital by the informant where he was declared dead. On the basis of the complaint lodged by the informant the offence came to be registered.

5. It appears that in this case initially the provisions of the MCOCA Act were not invoked and a charge-sheet was filed. However, the Investigating Officer after obtaining the approval filed a supplementary charge-sheet on 3 April 2021 invoking the provisions of the MCOCA Act against the Accused.

6. In short according to the prosecution the Applicant and the co-accused being members of the organized crime syndicate (of which the Accused No.4 of Hasmukh Patel is a Gang Leader) had intentionally caused the death of Rajesh Kanabar out of the property dispute in order to cause unlawful gains to the syndicate.

7. I have heard the learned counsel for the Applicant and the learned Additional Public Prosecutor. With the assistance of the learned counsel for the parties, I have gone through the record.

8. It is submitted by the learned counsel for the Applicant that the Applicant is neither the member of the Syndicate nor has any criminal antecedents against him. It is submitted that the prosecution has not collected direct or indirect evidence against the Applicant showing the complicity in the offence. He submitted that the Applicant is arrested merely on suspension. The learned counsel pointed out it is a settled position that the motive however, strong can not take place of evidence or proof. The learned counsel did not dispute that the Applicant was helping the Accused Nos.1 and 2 in the matter of the legal proceedings in respect of the land with the deceased. He however, submitted that alone is not sufficient to show that the Applicant is part of the conspiracy to eliminate the deceased. It is submitted that there is no specific role attributed to the Applicant, showing his complicity in the offence. He submitted that in the absence of any criminal antecedents, much less any common offences with the alleged gang leader or any other co-accused rigors of Section 21 (4) of the said Act, are not attracted.

9. The learned Additional Public Prosecutor submitted that as per the Call Data Record (CDR), the Applicant was found to be constantly in touch with the co-accused before and after the incident and the Applicant is seen in the CCTV footage at the Collector's Office, Pune.

10. The statement of Rahul Dagade shows that the Applicant had demanded Rs.10 Crores from the deceased for settlement of the dispute which reveals that the Applicant was part of the conspiracy. He submitted that there are four offences as set out in paragraph 16 of the Affidavit-in-reply against the gang leader Hasmukh Patel.

11. I have considered the submissions made.

12. It is not disputed that the Applicant was helping the Accused Nos.1 and 2 in the matter of the land dispute between the accused Nos.1 and 2 and the deceased. There were also attempts at amicable settlement.

13. The learned counsel for the Applicant even did not dispute the presences of the Applicant at the Collector's Office on the date of the incident as the Revenue case between the parties was scheduled for hearing on that date. Thus the presence of the Applicant in the CCTV footage, in the submission of the learned counsel would not be material. In this case even according to the prosecution the deceased was shot at by the Accused No.4. Hasmukh Patel who is stated to be the gang leader and there are certain criminal antecedents against him.

14. Indisputably, the Applicant is not having any previous offence much less common offence with the gang leader.

15. The only other circumstance against the Applicant is the statement of Rahul Dagade who states that there was a demand of Rs.10 Crores from the deceased for settlement of the dispute. Any such statement even if accepted would only *prima facie* be the evidence of motive. In my considered view, except the fact that the Applicant was assisting the Accused Nos.1 and 2 in the matter of the land dispute with the deceased and the fact that there were attempts through the Applicant for amicable settlement and alleged demand of Rs.10 lakhs there is no other evidence which is brought forth against the Applicant.

16. In such circumstances, I do not find that the rigors of Section 21(4) would apply. The investigation is complete and the charge-sheet is filed.

17. The Applicant was arrested on 6 October 2020 and he is in custody since then. In the result the following order is passed.

ORDER

(i) The applicant-Ganesh Dyaneshwar Kurhe be released on bail, in Crime No.413 of 2020 of Bandgarden Police Station, on executing a P.R. Bond in the sum of Rs.50,000/-with one or two solvent sureties, in the like amount.

(ii) The applicant shall undertake to remain present before the learned Special Court, during the trial, unless exempted.

(iii) The Applicant shall furnish his permanent address along with proof, before the learned Special Court.

(iv) The applicant shall not make any attempt to directly or indirectly to contact/threaten or influence the prosecution witnesses and shall not otherwise tamper with the prosecution evidence/witnesses.

(v) In the event of breach of any of the conditions, the bail is liable to be cancelled.

(vi) The bail bonds to be furnished before the learned Special Court.

(vii) The Criminal Application is disposed of in the aforesaid terms.

C.V. BHADANG, J.