

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3595 OF 2021

Kiran Damu Renuse

..Applicant

V/s.

The State of Maharashtra

..Respondent

Mr. Satyavrat Joshi a/w Mr. Nitesh Mohite for the Applicant.

Mr. R.M. Pethe, APP for the Respondent/State.

CORAM : C.V. BHADANG, J.

DATE : 1 MARCH 2022

P.C.

1. By this application, the Applicant (accused No.1) is seeking bail. The Applicant along with 14 others has been chargesheeted for the offence punishable under Section 364A, 365, 385, 395 of IPC and Section 3(1)(i), 3(4) and 7 of the Maharashtra Control of Organised Crime Act, 1999 ('MCOC Act' for short) in Crime No. 119 of 2015 of Police Station Saswad, District Pune.

2. The aforesaid crime, is registered on the basis of the complaint lodged by Meera Pokle on 04.05.2015. The prosecution case is that on 01.05.2015, the co-accused Amol Yevale had asked the informant to transfer her land at Dhayri in his name and to perform the marriage of her daughter with him. On 04.05.2015 at about 3.30 p.m., the co-accused Amol Yevale

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along with 10 to 12 unidentified persons is alleged to have kidnapped Sachin Kamthe, who is the nephew of the informant, in order to coerce the informant to marry her daughter with Amol Yevale and to transfer the land at Dhayri in his favour.

3. On the basis of the complaint, the offence came to be registered and after investigation a chargesheet is filed.

4. I have heard the learned counsel for the Applicant and the learned APP. With the assistance of the learned counsel for the parties, I have gone through the record.

5. It is submitted by the learned counsel for the Applicant that all the co-accused except the present Applicant have been released on bail. He pointed out that there is a prima facie finding recorded by this Court that the accused persons were not acting as a part of the organised crime syndicate. He, therefore, submitted that the Applicant cannot be single out. The learned counsel has sought parity with co-accused Amol Yevale, who has been held to be the prime accused, inasmuch as it was the wish of Amol Yevale to get the land of the informant and to marry with her daughter. It is pointed out that it was Amol Yevale who was also insisting for the informant to stay with him. It is submitted that the Applicant is arrested on 04.05.2015 and has completed about 7 years in custody. It is submitted that the test identification parade in this case was held on 25.06.2015 when

the date of incident is 4 May 2015. It is pointed out that the Applicant is not named in the FIR. The learned counsel for the Applicant placed reliance on the decision of the Supreme Court in *Ranjitsingh Brahmajeetsing Sharma v/s. State of Maharashtra and Anr.*¹

6. The learned APP has submitted that there are criminal antecedents to the discredit of the Applicant inasmuch as the Applicant is facing prosecution in five crimes other than the present one. It is submitted that the Applicant has been identified in the Test Identification Parade and was found on the spot. He submitted that the Applicant is shown to be the gang leader and therefore, cannot claim parity with Amol Yevale. The learned APP pointed out that the Applicant is not entitled to grant of bail in view of the regours of Section 21(4) of the MCOC Act. It is submitted that Sub-Section 5 of Section 21 would also come in the way of the Applicant being granted bail. The learned APP has placed reliance on the decision of the Supreme Court in *Kavitha Lankesh v/s State of Karnataka and Ors.*²

7. I have carefully considered the circumstances and the submissions made. It is a matter of record that all the accused, except the Applicant have been released on bail including Amol Yevale. It can prima facie be seen that it was Amol Yevale, who was interested and was threatening the informant to transfer the

1 2005 ALL MR (Cri) 1538 (S.C.)

2 AIR 2021 Supreme Court 5113

land at Dhayri and to perform the marriage of her daughter with him and was also insisting for the informant to stay with him. The FIR discloses that it was Amol Yevale and his 10 to 12 associates who had kidnapped Sachin Kamthe. The Applicant has not been named in the FIR. The test identification parade is conducted after more than 1 and 1/2 months of the arrest. I have gone through the detailed orders passed by this Court granting bail to the co-accused including co-accused Amol Yevale and I do not find that parity can be denied to the Applicant for the reasons as mentioned by the learned APP. It is necessary to note that some of the accused who have been identified in the test identification parade have also been granted bail. Similarly, so far as the Applicant found on the spot is concerned, even the accused Amol Yevale was found on the spot, who has been granted bail.

8. Coming to Section 21(4) of the Act, it requires twin conditions to be satisfied before the grant of bail namely (i) the Court should be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and (ii) that the accused is not likely to commit any offence while on bail.

9. The Supreme Court in *Ranjitsingh* (supra) has held that such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of material on records only for grant of bail and for no other purpose. The Supreme Court has *inter alia* held that the restriction on the power of the

court to grant bail, should not be pushed too far. It has been held that the wording of Section 21 (4) does not lead to the conclusion that the Court must arrive at a positing finding that the Applicant/accused has not committed an offence under the Act. The Supreme Court has noted that if such construction is placed, it will be impossible for the prosecution to obtain a judgment of conviction of the Applicants/accused. (see paragraphs 48, 49 and 55 of the judgment).

9. Coming to the present case, the co-accused including Amol Yevale has been granted bail and there is no reason why parity should be denied to the Applicant only on the ground of criminal antecedents. It is necessary to note that criminal antecedents can enter consideration, only if prima facie case is shown of the involvement in the offence/crime in respect of which the application for bail is being considered.

10. A learned Single Judge of this Court in *Mangesh Manik Kanchan and Anr. v/s State of Maharashtra*³ has held that under Section 21(4), the material placed and the allegations made against the accused in the offence have to be taken into account by the Court first and thereafter, to consider the question whether he is likely to commit any offence while on bail. It is trite that in the absence of the first requirement being satisfied, there is no occasion to dwell on the later.

3 2016 (1) Bom. C.R. (Cri) 350

11. Reliance placed on behalf of the State on the decision of the Supreme Court, in Kavitha Lankesh (supra) in my humble opinion is misplaced. That was a case where the Supreme Court was dealing with a challenge to the order passed by the High Court, thereby quashing the order passed by the Commissioner of Police, granting approval to invoke, the offence under Section 3 of the Karnataka Control of Organised Crime Act, 2000. The specific question was about the purport of Section 24 of the said Act.

12. Considering the over all circumstances, the following order is passed:

ORDER

i) The Applicant **Kiran Damu Renuse** be enlarged on bail on furnishing a PR bond in the sum of Rs.50,000/- with one or two solvent sureties in the like amount.

ii) The Applicant shall not reside in Jejuri or Dhayri till the conclusion of trial.

iii) The Applicant shall report to Shivaji Nagar Police Station on on 1st and 3rd Sunday of each month between 10.30 a.m. to 12 noon till the charge is framed.

iv) The Applicant shall not tamper with the prosecution evidence/witnesses.

v) The application is disposed of accordingly.

(C.V. BHADANG, J.)