

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3969 OF 2021

Mahendra Madanlal Saraf

Applicant

versus

The State of Maharashtra

Respondent

Mr.Priyal Sarda with Mr.Anup Lahoti and Mr.JaipalTare-Patil,
Advocate for applicant.

Ms.PN.Dabholkar, APP, for State.

Mr.Amit Shete, API, Faraskhana Police Station, Pune City, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 14th October 2022

PC :

1. The applicant is arrested on 2nd October 2020 in connection with C.R No1094 of 2020 registered with Faraskhana Police Station, Pune for offences under Sections 302, 143, 144, 147, 148 of IPC, Section 37(1) of Arms Act, Section 135 of Maharashtra Police Act. Subsequently Sections 109, 201, 120-B of Indian Penal Code were added and Sections 3(1)(i)(ii), 3(2), 3(4) of Maharashtra Control of Organized Crimes Act were invoked.

2. The case of prosecution is as follows. On 2nd October 2020 at about 00.15 the first informant was at his home. He heard loud noise and noticed that 5 to 6 persons were assaulting another person with weapon. He rushed towards spot. The assailants ran away. He saw accused Sunny Kolte, Sandeep Kolte, Rohit Kamble, Rahul Ragir and two other persons armed with weapons who ran away towards Gujarat Lodge. The first informant saw that injured was his brother-

in-law Deepak Martkar. He was lying in pool of blood. The first informant and others took the injured to hospital. Deepak is son of late Vijay Martkar who was corporator and social worker. There was dispute between Deepak Martkar and Ashwini Kamble with Sunny Kolte and there were complaints lodged against them. The applicant was social worker and member of political party. He was interested in contesting election of corporation and he was given nomination form. There were dispute between applicant and Vjay Martkar. It was a rivalry of 15 years between them. To destroy the political career, the applicant with the help of Ashwini and Sunny lodged cases against deceased, his father and first informant. On account of rivalry the victim was assaulted. The victim succumbed to the injuries.

3. Provisions of MCOC Act has been invoked. Charge sheet was filed.

4. Learned advocate for applicant submitted that there is no cogent evidence against applicant to show his involvement in the crime. Name of applicant is shown in the FIR suspecting that he is involved in the crime. It is not the case of prosecution that applicant has participated in the crime. The prosecution is relying upon statements of some witnesses and the confessional statements of co-accused stating that on the day of incident applicant was seen along with co-accused. There are no criminal antecedents against applicant. There is no evidence to show that applicant was involved with gang leader in any case or has participated in any criminal activities of the gang. Provisions of MCOC Act cannot be invoked against applicant.

5. Learned APP submitted that there is sufficient evidence against applicant showing his complicity in the crime. Evidence on record indicate that applicant had motive to commit crime. There was enmity between applicant and deceased. Confessional statement of one of the accused recorded u/s.18 of MCOC Act shows involvement of applicant as conspirator in the sense that applicant was in the company of co-accused. The statement of witnesses recorded during investigation indicate that applicant was associated with co-accused. Confidential information collected during investigation shows that applicant was creating terror in the area along with other accused. The applicant was involved in one case in the past in the year 1998 which was registered for offence u/s.326 of IPC. Learned counsel for applicant submitted that the case which was registered in the year 1998 has been withdrawn by the complainant.

6. Undisputedly the applicant is in custody for a period of two years. Apparently there are no criminal antecedents against applicant. From the material on record it appears that case of prosecution is that the applicant had motive or enmity with the deceased. There is no evidence to show that applicant had any connection with the gang leader in crime. No case is pending against applicant. The FIR names applicant as suspect on account of animosity against deceased and applicant. The applicant was not present at the scene of offence at the time of assault. He did not participate in the assault. There is not cogent evidence to establish that he was the conspirator. There is no evidence to show that somebody had engaged the applicant or the gang leader for commission of crime. Considering the nature of evidence and the fact that there is no material to show complicity of applicant with the

gang leader, case for grant of bail is made out in spite of rigours of Section 21(4) of MCOC Act.

ORDER

- (i) Bail Application is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with C.R No.1094 of 2020 registered with Faraskhana 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 in lieu of sureties;
- (iv) The applicant shall report Faraskhana Police Station once a month on every first Saturday of the month between 11 am and 1 pm till further orders;
- (v) The applicant shall not tamper with evidence;
- (vi) The applicant shall attend Trial Court on date of hearing regularly, unless exempted for any reason.

(PRAKASH D. NAIK, J.)

MST