

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

CRIMINAL BAIL APPLICATION NO.4446 OF 2021

Prasad @ Diamond Pandurang Powar	...Applicant
versus	
The State of Maharashtra	...Respondent

Mr.B.A.Lawate, Advocate for applicant.
Ms.PN.Dabholkar, APP, for State

CORAM : PRAKASH D. NAIK, J.
DATE : 19th OCTOBER 2022.

PER COURT:

1. This is an Application for Bail in connection with C.R.No.0049 of 2019, registered on 15th January, 2019 with Satara Police Station, for the offences punishable under Sections 302, 387, 120-B, 143, 148, 147 and 149 of Indian Penal Code ("IPC", for short). The Applicant was arrested on 19th January, 2019. Subsequently, Sections 3(1)(i)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short "MCOC Act") were invoked.

2. The prosecution case is that, on 16th January, 2019 at about 2:30 p.m., the complainant and his nephew Samrat had gone to petrol pump. Thereafter, his nephew left for his home. The complainant, however, was at petrol pump. He heard some commotion and went to the place of commotion. He noticed that

his nephew Samrat was assaulted by Mayur Jadhav, Saurabh Kailas Kharat @ Kukya, Neeraj Shelke, Sangram Danane and two and three others by sattur, sickle, bat, hockey stick and iron rod. Injured was taken to the hospital. On account of previous quarrel, offence vide C.R.No.947 of 2018 was registered under Section 324 read with Section 34 of IPC by the nephew of the complainant against some persons. Thereafter Mayur Jadhav had lodged complaint against Vaibhav Nikam, Samrat Nikam and Sagar Nikam with Satara Police Station vide C.R.No.956 of 2018. The offence was registered under Sections 324, 326 read with Section 34 of IPC. Subsequently, Section 307 of IPC was added. They were arrested and bail was granted. After registration of the said crime, the family members of Mayur Jadhav, threatened that, at least one member from Nikam family would be finished.

3. Learned Advocate for applicant submitted that, the applicant is not named in the FIR. The applicant is not assailant in the crime. Co-accused Pramod Jadhav has been granted bail. Provisions of the MCOC Act are not attracted against the applicant. The applicant is in custody for a period of about four years. The applicant is not having any criminal antecedents. Nothing is seized from the custody of applicant. The applicant has no motive to

commit crime. The applicant and accused No.10-Sanket Shinde allegedly purchased baseball bats from the sports shop at Satara. The purchase receipt is in the name of accused No.10. Investigation is completed and charge-sheet is filed.

4. Learned A.P.P. submitted that, there is evidence to show that the applicant is involved in the crime. Provisions of MCOC Act were applied. During the course of investigation, involvement of the applicant was disclosed. The accused No.1 is the head of organized crime syndicate. The accused No.1 made a call to the co-accused and told him to bring the baseball bats and weapons. C.C.T.V. footage shows presence of applicant at spot of incident. The applicant and co-accused had gone to purchase the baseball bats in Sports Shop. Witness Sunny Jadhav had accompanied them. The baseball bats were concealed in a box. On the day of incident, the accused No.1, accused No.2 and the applicant were seen together by Avinash Chavan. The said witness was asked to see, whether the deceased is at the petrol pump. On the date of incident, the applicant and co-accused Sanket Jadhav were seen together on motorcycle. The applicant has been identified by witness Sandip Shedge and Sanjay Nikam. The eye witnesses had referred to the presence of applicant at the time of commission of

crime. The applicant and co-accused handed over sticks to co-accused. The applicant and co-accused fled away from the place of incident. Hence, application for bail may be rejected.

5. The applicant is not named in the FIR. He is not the assailant in the crime. The first informant has stated that, Samrat was assaulted by Mayur Rajendra Jadhav, Saurabh Kharat, Dhreej Shelke, Sangram Danane and 3 to 4 other persons with weapons like, Sattur, Sickle, Bat, Hockey-Sticks and iron rod. Statement of Sunny Sudhir Jadhav was recorded on 18.01.2019. He has stated that on 14.01.2018 at about 8.45 p.m. Sanket Shinde and Prasad Powar (applicant) met him and told him that they are required to go to Satara. He was taken to Jyoti Sports Shop at Satara. His friends purchased two baseball bats. On inquiring about reason for the purchase of bats, Sanket Shinde informed him that Mayur Jadhav had given him Rs.500/- to purchase baseball bats. The bats were kept at Kabutarkhana and all of them dispersed. On 15.01.2019 he met Sanket Shinde and thereafter left home. Subsequently, he came to know that, Samrat was assaulted. From the statement of this witness it can be seen that, the amount to purchase the baseball bats was given by co-accused to Sanket Shinde. He was told to buy the bats by Mayur Jadhav. The

statement does not indicate that the applicant was aware about the reason for purchase of bats and he was not deputed to purchase the bats. Statement of Sangram Jadhav was recorded on 25.01.2019. He stated that, he knows Prasad Powar (applicant). On 15.01.2019, he met Mayur Jadhav. Thereafter they met Prasad Powar and Sanket Shinde. He accompanied Sanket Shinde and Prasad Powar and went towards Kaloshi Road. Prasad Powar and Mayur Jadhav proceeded towards the petrol pump on motorcycle. They returned back within short time. Friend of Mayur Namely Kukya came there. Mayur was receiving phone calls from some person. Avinash Chavan met them. He left after some time. Sanket Shinde and Prasad Powar took out four sticks, which were hidden in the bushes and handed over to Kukya. Samrat Nikam came on his motorcycle. He was assaulted by Mayur Jadhav and Kukya with sticks. He ran away. He was followed by Pramod Powar (applicant) and Sanket Shinde. On perusal of this statement, it is apparent that, no role of assault is attributed to the applicant. According to this witness, the deceased was assaulted by sticks. Whereas the first informant Sanjay Nikam has stated that deceased was assaulted with Sattur, Sticks, Bat, Hockey-stick and iron rod. This witness has also stated that, Avinash Chavan came to spot and left after some time. Statement of Avinash Chavan dated

06.03.2019 mentions that, on 15.01.2019 he saw Sunny Jadhav, Aniket Kaple, Sangram Jadhav, Jitesh Gaikwad, Sanket Shinde, Prasad @ Daimond near Amarlakshmi Tank. Mayur Jadhav had approached towards water tank near Kabutarpeti and left the place after 10 minutes. Thereafter, in the afternoon he again met Mayur Jadhav, Kukya Kharat, Prasad Powar, Sanket and Sangram Jadhav. He left towards his shop. Thereafter, he went to pump of Nikam for filling Petrol in his vehicle and informed that, no one is at the Petrol Pump thereafter, he came to know that Samrat was assaulted. He is not eye witness to incident of assault. His statement was recorded belatedly. His statement would indicate that, applicant was at the most in company with the co-accused. No other overt act is attributed to him. Statement of Sandip Shedge was recorded on 22.03.2019, wherein it is stated that, on 15.01.2019, Sanket Shinde and his friend Prasad Powar (applicant) had visited his house. Sanket informed him that quarrel took place in his vicinity and their names are involved in the incident. There was no extra judicial confession to this witness. Witness Vikrant Mane in his statement dated 06.03.2019 has stated that, on the day of incident he saw applicant and other accused speeding from their motorcycle. Test identification parade was conducted on 14.06.2019. After a period of 6 months from date of incident.

Witness Sanjay Nikam has identified the applicant. Role of applicant is not specified after identification. Prosecution has not pointed out any supplementary statement of first informant Sanjay Nikam after the identification parade to specify role of applicant. Sandip Shedge has also identified the applicant. His statement would at the most indicate that, applicant had accompanied Sanket Shinde to his house fearing their implication in the incident. Thus, analysing the statements of the witnesses there is no cogent evidence to show that the applicant was assailant in the crime. He is in custody for a period of about 4 years. There is no evidence to show that the applicant is involved in the crime syndicate headed by the co-accused in commission of any crime and hence, the restriction under Section 21(4) of the MCOC Act will not deprive the applicant from releasing on bail. Hence, bail can be granted.

ORDER

- (i) Bali Application is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with C.R No.49 of 2021 registered with Satara City Police Station on executing P.R 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 report Satara City Police Station once in a month on every first Saturday between 11 am and 1 pm till further orders;
- (v) The applicant shall not tamper with prosecution evidence;
- (vi) The applicant shall attend Trial Court on the dates of hearing, unless exempted by Trial Court for some reason.

(PRAKASH D. NAIK, J.)