

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

CRIMINAL BAIL APPLICATION NO. 4503 OF 2021

Vivek Mahadev Yadav ..Applicant

V/s.

The State of Maharashtra ..Respondent

**WITH
INTERIM APPLICATION NO. 556 OF 2022
IN
CRIMINAL BAIL APPLICATION NO. 4503 OF 2021**

Mr. Vishnu alias Bablu Gawali .. Applicant/Intervenor

IN THE MATTER BETWEEN:

Vivek Mahadev Yadav ..Applicant

V/s.

The State of Maharashtra ..Respondent

Mr. Siddhaarth Luthra, Senior Advocate a/w Mr. Sudeep Pasbola with Aniket Nikam with Yash Giri with Ashish Satpute with Piyush Toshniwal with Amit Icham i/b Vivek Arote for the Applicant.

Mr. A.R. Kapadnis, APP for the Respondent/State.

Ms. Pooja Agarwal a/w Mr. Prakash Chavan for the intervenor.

**CORAM : C.V. BHADANG, J.
RESERVED ON : 1 APRIL 2022
PRONOUNCED ON : 28 APRIL 2022**

(Through Video Conferencing)

P.C.

1. This is an application for bail. The Applicant (Accused No. 3) alongwith the co accused has been chargesheeted for the offence punishable under Section 120-B and 115/302 read with Section 34 of IPC, Section 25(3) of the Arms Act, Section 37(1) and 135 of the Maharashtra Police Act and Section 3(1) (ii), 3(2) and 3(4) of the Maharashtra Organised Crime Act 1999 ('MCOC Act' for short) arising out of Crime No. 583/2021 of Police Station Kondhawa, Pune.

2. The aforesaid crime is registered on the basis of FIR dated 14.7.2021 lodged by Police Naik Sushil Ghiwar. According to the informant a secret information was received on 14.07.2021 that the co-accused Rajan Rajmani who was out on 'Covid bail' had taken a contract for killing an unidentified person. It was also revealed that the co-accused Rajan Rajmani was moving on his Aactiva motorcycle in Lulla nagar area of Pune. Accordingly, a trap was laid and the co-accused Rajan Rajmani along with Ibrahim Shaikh were apprehended under Lulla nagar bridge at about 15.45 hrs. The informant further claims that two country made pistols with live cartridges were recovered from the co-accused Rajan Rajmani and one country made pistol with live cartridges was recovered from co-accused Ibrahim Shaikh. From the dicky of two wheeler of the accused Rajan Rajmani, a cash of Rs.1,20,000/- was recovered.

3. It appears that during the investigation, it was revealed that the Applicant had given the contract and had engaged the accused Rajan Rajmani and Ibrahim Shaikh for committing murder of one Vishnu alias Bablu Gavali. This was on account of the fact that there was previous enmity between the Applicant and Bablu Gavali as Bablu Gavali had previously made an attempt on the life of the Applicant.

4. During the course of the investigation, mobile handsets were recovered from the co-accused Rajan Rajmani containing whatsapp chats allegedly with the Applicant, who according to the prosecution is referred to as 'VK' and 'VK New' in the whatsapp chats with the accused Rajan Rajmani disclosing the conspiracy to kill Bablu Gavali. It was also revealed that the accused Rajan Rajmani was previously convicted which was subject matter of challenge in appeal before the High Court in which Rajan Rajamani was seeking bail. It is the case of the prosecution that the Applicant had assured Rajan Rajmani to help him out financially in getting bail in the said criminal appeal. Further according to the prosecution the Applicant and Rajan Rajmani had met near High Court, Mumbai on 21.06.2021 which was part of the conspiracy to eliminate Bablu Gawali.

5. In this case, a proposal was made for grant of sanction to invoke the provisions of the MCOC Act and the competent

authority by an order dated 30.10.2021 had granted sanction under section 23(2) of the said Act. In this case after investigation, a chargesheet is filed.

6. I have heard the learned Senior Counsel for the Applicant and the learned APP assisted by the learned counsel for the intervenor Mr. Bablu Gawali. Perused record.

7. It is submitted by the learned Senior Counsel for the Applicant that two mobile handsets namely (i) Samsung Galaxy Note 20 ultra 5G model and (ii) Samsung Galaxy Note 9 were recovered from the Applicant on his arrest on 21.07.2021. According to the prosecution, the Applicant was using two mobile numbers namely (i) 8888304444 (standing in the name of Kumar Sable) and (ii) 9689444244 (standing in the name of Sujata Jagtap). It is submitted that none of the mobile numbers were registered in the name of the Applicant. It is submitted that the reliance placed on the statements of these witnesses dated 04.09.2021 and 14.09.2021 is misplaced. It is submitted that the sim cards relatable to these mobile numbers have not been recovered from the Applicant at the time of his arrest. It is pointed out that corresponding whatsapp chat has not been recovered from two mobile handsets of the Applicant.

8. It is next submitted that the IMEI numbers of the two mobile handsets (at page 255 of the application) do not match

with the Call Data Records (CDR) of the mobile numbers as referred to above. It is also submitted that reference to a person by name “NG” cannot be said to be a reference to Bablu Gawali, nor the reference to “VK” and “VK New” is relatable to the Applicant. Thus, it is submitted that the reliance placed on the whatsapp conversation does not show the complicity of the Applicant in the alleged conspiracy. It is also submitted that the tower location of the mobile of the complainant and one other officer, who was the member of the raiding party, do not show that these officers were present at Lulla Nagar on the date and time of arrest of Rajan Rajmani. It is submitted that the prosecution case even does not make out a case of preparation, let alone an attempt or abetment of murder. It is submitted that the invocation of the provisions of MCOC Act, is also not proper as there are no, two pending chargesheets shown against the Applicant as required by Section 2(d) of the MCOC Act. The learned Senior Counsel for the Applicant has also taken exception to the purported confession of the accused Rajan Rajmani recorded under Section 18 of the MCOC Act.

9. It is submitted that the prosecution case is about the Applicant having engaged the co-accused for eliminating Bablu Gawali on account of previous enmity and there is no pecuniary advantage involved, nor a streggle for supremacy. Thus, invocation of the provisions of the MCOC Act, is misplaced.

10. The learned APP assisted by the learned Counsel for the informant has submitted that the whatsapp chat has been recovered from the mobile handset of Rajan Rajmani wherein the Applicant is referred to as “VK” and “VK New”. It is submitted that the mobile handsets have been sent for forensic examination and the report is awaited. The learned APP has referred to the statements of Kumar Sable and Sujata Jagtap, who claimed that the said mobile numbers, as referred to above were used by the Applicant. It is pointed out that the mobile number standing in the name of Sujata Jagtap is linked to Aadhar card of the Applicant, which has not been explained. The learned APP has also referred to the statement of Mr. Santosh Bhurate, who is a clerk attached to the office of the Advocate representing the co-accused, Rajan Rajmani in the pending appeal and the statement of Uttam Bangare, who is the driver of the Applicant which shows that on 21.06.2021, the Applicant and the co-accused Rajan Rajmani were together in Mumbai.

11. It is submitted that the acquittal of the Applicant in about 5 out of 7 cases is not material inasmuch as none of these acquittals are on merits. It is pointed out that crime No. 153 of 2014 is still pending against the Applicant, in which the informant is the complainant. Reliance is placed on the decision of this Court in *Bharat Shantilala Shah v/s. State of*

*Maharashtra*¹ in order to submit that the circumstances (the acquittal or otherwise) which follow the charge are not material. It is pointed out that the decision of this court has been confirmed by the Supreme Court in *State of Maharashtra v/s Bharat Shantilal Shah*². It is submitted that word “other advantage” as referred to in Section 2(1)(e) of the Act have to be given an expansive meaning and cannot be restricted to the object of gaining pecuniary benefits or undue economic advantage alone.

12. I have considered the circumstances and the submissions made.

13. In this case admittedly there is no incident of any actual assault or even an attempt on the life of Bablu Gawali. The offence alleged is essentially under Section 115 which is abetment of offence punishable with death or imprisonment for life, in a case where the offence is not committed. Under Section 115, whoever abets the commission of an offence punishable with death or imprisonment for life, shall, if that offence be not committed, in consequence of the abetment and where no express provision is made for the punishment of such abetment, is punishable with imprisonment which may extend to seven years with fine. Undoubtedly, the prosecution is also alleging offence under the MCOC Act. It is necessary to note

1 2003 ALL MR (Cri) 1061

2 2008 AIR SCW 6431

that there is no recovery of any arms from the possession of the Applicant or at his instance. The prosecution is essentially relying on the confession of the co-accused Rajan Rajmani, recorded under Section 18 of the MCOC Act, in which the co-accused claims that it was the Applicant who had engaged him and the other co-accused for eliminating Bablu Gawali on account of the previous enmity between the Applicant and Bablu Gawali. Atleast prima facie it is not shown that the offence of abetment under Section 115 of IPC was committed as a part of the continuing unlawful activity of the Organised Crime Syndicate of the Applicant. It can be seen that it is the prosecution case that the incident of engaging the co-accused Rajan Rajmani and others for eliminating Bablu Gawali was on account of the previous personal enmity between the Applicant and Bablu Gawali. It needs to be stressed that Bablu Gawali has not been harmed and there was not even an attempt on his life. It is in this context it is submitted on behalf of the Applicant that the object of the crime was neither to gain any pecuniary advantage nor to claim supremacy or for any other advantage within the meaning of Section 2(1)(e) of the MCOC Act. It can thus be seen that the first circumstance is in the nature of a confessional statement by the co-accused.

14. Secondly, the prosecution is relying on the alleged whatsapp messages exchanged between the Applicant and co-accused Rajan Rajmani. It can be seen that in the whatsapp

message according to the prosecution Bablu Gawali is referred to as “NG” and the Applicant as “VK” and “VK new”. Prima facie there is no material to suggest any such reference. There are two mobile handsets recovered from the Applicant having IMEI number ending with 3517 and 4369. There are two mobile numbers attributed to the Applicant ending with 0444 and 5244 which are standing in the name of Kumar Sable and Sujata Jagtap. The statements of these witnesses show that these numbers were used by the Applicant. It is true that the number associated with Sujata Jagtap is linked to Aadhar card of the Applicant. However, there is no recovery of any sim cards from the Applicant. That apart it is pointed out on behalf of the Applicant that IMEI numbers mentioned in the CDR of two mobile numbers do not match, with the IMEI numbers of the two mobile handsets recovered from the Applicant. It is necessary to note that the mobile handsets have been sent for forensic examination and the report is awaited.

15. The third circumstance is about the statement of Uttam Bangare and Santosh Burte. Santosh Burte is the clerk in the office of the Advocate who is representing Rajan Rajmani in the appeal and the Advocate had also represented the applicant earlier. While, Uttam Bangare is the driver of the Applicant. In my considered view, merely because the Applicant had accompanied the co-accused Rajan Rajmani to the High Court where the criminal appeal of Rajan Rajmani was pending, may

not be sufficient at this stage to inter conspiracy. In the chart of the offences registered against the accused (at page 51 of the compilation) shows that out of eight offences, except the present offence, no other offence is shown to be committed by the Applicant along with the co-accused Rajan Rajmani and Ibrahim Shaikh. In the circumstances, at this stage it is not necessary to go into the question of effect of the acquittal and the reasons for such acquittal from the previous offences.

16. In my considered view the requirement of Section 21(4) are satisfied in this case and the Applicant can be released on bail on conditions.

17. In the result, the following order is passed:

ORDER

- (i) The Application is allowed.
- (ii) The Applicant shall be released on bail on execution of a PR Bond in the sum of Rs. 50,000/- with one or two solvent sureties in the like amount to the satisfaction of the Special Court.
- (iii) The Applicant shall undertake to remain present during the course of the trial unless exempted.

(iv) The Applicant shall surrender his passport, if any, if not already done, before the Special Court.

(v) The Applicant shall not directly or indirectly make any attempt to contact or to influence the prosecution witnesses or to otherwise tamper with the prosecution evidence.

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

(vii) The observations herein are of *prima facie* nature and the learned Sepcial Judge shall not be influenced by the same at the trial.

(vii) Bail bonds to be furnished before the learned Special Judge.

(viii) The interim application is also disposed of.

C.V. BHADANG, J.

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA
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