

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

CRIMINAL BAIL APPLICATION NO.3398 OF 2019

Rohan @ Lalya Rajendra Kakade	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Satyavrat Joshi, Advocate a/w. Nitesh Mohite, for the Applicant.
Mr. Ajay Patil, APP for the Respondent-State.

CORAM :SARANG V. KOTWAL, J.
DATE : 29th MARCH, 2022
[IN CHAMBER AT 4:30 P.M.]

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R. No.247/2015 registered at Phaltan Police Station, District-Satara under Sections 302, 307, 387, 143, 147, 148, 149, 120B and 201 of IPC and under Sections 3, 25, 4 and 27 of the Indian Arms Act. Subsequently the provisions of Maharashtra Control of Organised Crime Act, 1999 (for short, 'MCOC Act') were invoked and the offences under Sections 3(1)(2), 3(2) and 3(4) of the MCOC Act were added. The provisions of MCOC Act were applied vide prior approval under Section 23(1) of the MCOC Act on 19.1.2016. After completion of the investigation, sanction under Section 23(2) of the MCOC Act was granted on 7.5.2016.

2. Heard Shri Satyavrat Joshi, learned counsel for the Applicant and Shri Ajay Patil, learned APP for the State.

3. The prosecution case is about the murder of one Jyotiram Chavan, which was committed on 15.12.2015 using swords and pistol. The organized crime syndicate was led by one Yogesh Ahiwale, against whom there are five offences registered since the year 2008 as mentioned in the affidavit filed by the Respondent-State. On the date of the incident i.e. on 15.12.2015 because of the previous enmity Jyotiram Chavan was assaulted at Zeerapwadi in front of Jyotiram's hotel. The incident took place in the morning at about 7.30 a.m.. At least 8 to 9 accused came to the spot. Most of them had come in an Ertiga car. Jyotiram started running away. The accused chased him and one of them fired at him. The others assaulted him with swords. After that they sat in the car and went away. Jyotiram succumbed to his injuries.

4. Learned counsel for the Applicant submitted that the Applicant is falsely implicated. There is no role attributed to him. The provisions of the MCOC Act are wrongly applied against him. He has no criminal antecedents against his name. The confessions

of the co-accused are weak piece of evidence and cannot be used against the Applicant. The recovery of clothes at his instance is not free from doubt.

5. As against this, learned APP submitted that there are statements of eye witnesses who have seen the Applicant at the spot. They have seen the Applicant sitting in the car in which the assailants had come on the spot and had left the spot. The confessional statements of the co-accused are admissible under Section 18 of the MCOCA Act and, therefore, those are relevant circumstances. He submitted that recovery of blood stained clothes of other accused at the instance of the present Applicant is also an important circumstance.

6. I have considered these submissions. With the assistance of both learned Counsel, I have perused the relevant statements. As far as recovery of blood stained clothes is concerned, the blood stained clothes of accused Nos.4, 5, 6 and 9 are recovered at his instance. He had concealed them behind the Nilgiri trees. No explanation is offered by him in that behalf.

7. There are confessional statements of co-accused Suraj

Ahiwale and Sagar More. Suraj Ahiwale has stated that on the date of the incident Suraj along with other accused Mangesh Ranadiwe, Sagar More, Bunty Kakade, Nilesh Ghorpade, Swapnil Kakade, Sharad Khawale and the present Applicant had gone to Zeerapwadi in the Ertiga car. They reached there at 7.30 a.m.. Jyotiram saw them and started running. The assailants chased him. Bunty Kakade and Swapnil Kakade fired at Jyotiram. After that, all others, including the present Applicant, assaulted Jyotiram with swords. One Vishal Thombare, who had come on the spot, was also assaulted by Sharad Khawale with sword. After that, all the assailants came back to the car and went away. This confessional statement was recorded on 4.2.2016.

8. Similarly, the co-accused Sagar More has given confessional statement. He has also narrated the incident in the similar manner. He has mentioned about the presence of the Applicant along with others who had chased the deceased. All of them had come to the spot and left the spot together. This statement was recorded on 4.2.2016.

9. The statement, under Section 27 of the Evidence Act leading to recovery of clothes at the instance of the present Applicant, is recorded on 26.12.2015 and those clothes were recovered from behind the Neelgiri trees.

10. Thus, at this stage, there is sufficient material against the present Applicant showing his involvement in a serious offence of commission of murder of Jyotiram. Therefore, though there is no criminal antecedent against the Applicant, the present crime appears to have been committed on behalf of an organized crime syndicate. Therefore, in this case it is not possible to record a satisfaction under Section 21(4) of the MCOC Act that the Applicant has not committed any offence under the MCOC Act or that he is not likely to commit similar offence in future. Considering this material, no case for grant of bail is made out. The Application is rejected.

(SARANG V. KOTWAL, J.)