

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.202 OF 2023

RAVINDRA UTTAM GONDKAR
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Nitin Sejpai holding for
Mr. S. R. Andhale, Mr. R. B. Kaware
APP for Respondent/State : Mr. S. B. Narwade

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CORAM : S. G. MEHARE, J.

DATE : 16.02.2023

PER COURT :

1. Heard the learned counsel for the applicant and the learned A.P.P for the respondent/State at length.
2. The applicant has been arraigned as an accused of the offences punishable under Sections 307, 109, 120B, 201, 212 506 read with Section 34 of the Indian Penal Code, Sections 7/25, 3/25 and 27 of the Arms Act, Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crimes Act (for short, 'MCOC Act').
3. Admittedly, the applicant was not present on the spot of the incident. The first information report reveals that the complainant and the injured Suresh Thakur were running a shop of Prasad (Sweetmeat)

beside Hanuman Temple. The applicant, Kiran Hazare and Deepak Gondkar forcefully opened a Novelty Prasad shop in front of their shop. They were not allowing the complainant and injured to run the business in their shop. They had some discord over place of said Novelty Prasad shop. The applicant and other had threatened them. One lady police constable was also supporting the accused. She had assured on conference to co-accused Kiran Hazare and promised him that if he would kill the injured, she would protect him from going to jail. The incident happened on 10.12.2021. The co-accused Kiran shot fire against the injured holding pistols in both hands. Before the fire, the co-accused Kiran asked the applicant on phone what is to be done with the injured, at that time the applicant told him that eliminate him and thereafter the fire was opened. The injured has suffered serious fire arm injury on his chest.

4. The learned counsel for the applicant would submit that there is contradictory evidence as regards the conversation. The was conversation reveals use of only word “टाकल का ?”, that too after the incident. That does not mean that the applicant instigated the other co-accused to fire at injured. The evidence collected by the prosecution falls short to prove the abetment. Co-accused has not given confession under Section 18 of the MCOC Act. He has vehemently argued that to deny bail under Section 21(4) of the MCOC Act, the prosecution must have *prima facie* evidence.

Reading the evidence collectively, the prosecution has no *prima facie* evidence against the applicant. He also read Section 2(d), (e) and (f) of the MCOC Act and vehemently argued that considering these definitions, no offence is made out against the applicant. He has fairly confessed that there are four crimes to his discredit. One of them is under Section 142 of the Bombay Police Act, two cases are under Section 353 of the Indian Penal Code and one case is under Section 379 of the Indian Penal Code.

5. He also referred to the first information report in which the presence of the co-accused Deepak Gondkar was allegedly shown. However, it has been transpired that he was not on the spot of the incident. Therefore, the false involvement of the applicant is highly possible. He claims that this Court granted bail to co-accused Deepak Gondkar. On the same footing, the applicant is also entitled to bail. He relied on the case of *Jayendra Saraswathi Swamigal Versus The State of Tamil Nadu, (2005) 2 Supreme Court Cases 13*, and vehemently argued that only the words of Section 10 are not capable of being widely construed so as to include a statement made by one conspirator in the absence of the other with reference to past acts done in the actual course of carrying out the conspiracy, after it has been completed. Relying on the judgment he prayed to release the applicant on bail.

6. Per contra, the learned A.P.P vehemently argued that it has been

transpired in the investigation that the applicant was a person who always used to be in the accompany of accused Kiran. In one of the crime under the MCOC he is co-accused with the co-accused Kiran. The vehicle used in the crime was supplied by him. He was constantly in touch with Kiran. *Prima facie* evidence is available on record. There was conversation between the applicant and the co-accused Kiran before the incident and after incident the applicant has confirmed whether the injured has been killed by using word “टाकल का?”. He would also argue that considering the material collected against the applicant and repeated involvement of the applicant in the crime *prima facie* case is made out against the applicant, therefore, Section 21(4) of the MCOC Act would apply. He has also argued that the telephonic conversation is sufficient to show that it was the applicant who was instructing co-accused Kiran and on his say Kiran opened the fire and caused injury to the injured. The applicant and other co-accused have created terror in the locality. They were continuously involved in either of the crimes, therefore, applicant does not deserve bail.

7. *Prima facie*, it reveals that before the incident the complainant and injured were threatened on running the business. One of the lady police constable had conference with the co-accused Kiran and she was saying that she would protect him if he would kill Suraj. This was the incident before the date of the actual incident. The injured and the complainant

were called on the spot of the incident. The applicant was speaking on the speaker of the mobile phone with executant of the crime. Kiran was asking him what is to do with Suraj ? Thereon, he instructed Kiran to eliminate Suraj Thakur. Thereafter, fire was opened and injury to the chest was caused. Further, telephonic communication as referred to by the learned counsel for the applicant reveals that immediately after the incident, the applicant has confirmed whether the fire was opened at Suraj Thakur. The word “टाकल का?” means, whether fire has been opened. If the applicant has no concern with the alleged incident, he had no reason to ask whether the fire was opened or not. The telephonic conversation between Kiran and present applicant before and after the incident reveals that they had plotted the conspiracy to eliminate Suresh Thakur. Therefore, this Court is of the view that this is *prima facie* evidence against the applicant. There are antecedents to his discredit. The offence is apparently serious. The applicant appears to be involved in the crime. Therefore, he does not deserve bail.

8. For the above reasons, the application stands dismissed.

(S. G. MEHARE)
JUDGE