

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

CRIMINAL BAIL APPLICATION NO.3544 OF 2022

Laxman Ganpat Lekawale

...Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Ranjeet V. Sangle a/w Mr. Chaitanya R. Kulkarni,
Ms. Harshada Shrikhande, Mr. Nehal Dhruv, Mr. Ameet Shinde,
Mr. Abhinav Tewari, Mr. Vipul Rane and Mr. Prasad Rakh for
the Applicant.

Ms. P. N. Dabholkar, APP for the Respondent-State.

CORAM : G.A. SANAP, J.

DATE : 7th NOVEMBER 2023

P.C:-

. Heard.

2. The Applicant/Accused No.1 in Crime No. 44 of 2019 registered with Bhujinj Police Station, Satara for the offences punishable under Sections 307, 326, 143, 147, 148, 149 of the Indian Penal Code, 1860 (for short "IPC") & Sections 3, 5 and 25 of the Arms Act, 1959 and Sections 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organized Crime Act, 1999 (for short

“MCOCA”) and Sections 37(1)(3), 135 of Maharashtra Police Act, 1951, has made this Application for bail.

3. The learned Advocate for the Applicant/Accused submitted that, as far as this crime is concerned, except the presence of the Accused on the spot, no overt act or any specific role has been attributed to him. The learned Advocate submitted that, this Accused, at the most, could be said to be present with the wrong people at the wrong time. The learned Advocate in all fairness conceded that, in earlier crime which was under the Maharashtra Control of Organized Crime Act (MCOCA Act) he was on bail. The learned Advocate submitted that, while considering the role attributed to the accused in this case, the previous crime registered against him may not stand in his way. The learned Advocate further submitted that, since there is no overt act or role attributed to the Accused in this crime, the rigors of Section 21(5) would not be attracted. The learned Advocate further submitted that, there was no motive for commission of this crime even by the main Accused. It is pointed out that, the trifle reason has led to the quarrel and firing by the Accused

Nos.1 and 6. The learned Advocate submitted that, there was dispute with regard to the payment of the toll charges and that dispute led to the occurrence of the incident. The learned Advocate submitted that, as per the case of the prosecution this Accused was seen standing at the toll plaza in the CCTV footage. The learned Advocate further submitted that, not a single witness has attributed any overt act or specific role to the accused. The learned Advocate submitted that, his absconding for two years in the backdrop of the role attributed to him may not come in his way. The learned Advocate submitted that, the Court may impose stringent conditions, in case the Court is inclined to grant bail.

4. The learned APP submitted that, the earlier crime registered under the MCOC Act was with the gang leader, who is also an Accused in this crime. The learned APP submitted that, even if it is assumed that, he has not played any overt act or a role on the spot, he could be said to be an abettor in the commission of this crime. The learned APP submitted that, the Accused No.8 being companion of the remaining Accused, could have

taken reasonable steps to prevent the occurrence of the incident. The learned APP submitted that, the second crime registered under the MCOC Act against the Accused is sufficient to deny him bail by invoking the provisions of the Section 21(4) of the MCOC. The learned APP further submitted that, considering the dominant position of Accused, in case of his release on bail, he is likely to pressurize the witnesses.

5. In order to appreciate the rival submission, I have gone through the record and proceedings. It is undisputed that, before this crime, the Accused was charge-sheeted for the offence under the MCOC Act. In the said crime, he was on bail and while on bail, this crime was committed. It is to be noted that, this crime as can be seen from the FIR, was committed without any motive or pre-meditation. It is seen that, on account of a trifling reason of payment of the toll charges, the dispute started, which culminated in commission of the crime. The incident has been recorded in the CCTV installed at the toll plaza. Undisputedly, the Accused No.8 is seen standing near the toll plaza when the incident was going on. It is further seen that, no overt act or any

role has been attributed to the Accused either by the prosecution or by any witness. It is seen that, he was present on the scene at the time of the occurrence with the remaining Accused. His presence was recorded in the CCTV footage and therefore he was made an Accused in this case. It is further seen that, he was identified in the Test Identification Parade ('TI Parade' for short) by the witnesses. However, the identification of this Accused in TI Parade has been correlated to his, mere presence on the spot and not for commission of any overt act.

6. It is seen that, the case of the prosecution is that, the two pistols were used for the purpose of firing by Accused Nos.1 and 6. The pistols were admittedly recovered at the instance of the Accused No.5. In this case there are 11 Accused. Out of the 11 Accused, 8 Accused have been released on bail. It needs to be stated that, the Accused who have been released on bail have criminal antecedents, however, they are not pressing the prosecution/charges under the MCOC Act. The Court has to look into the role played by the Accused while deciding the Bail Application. The Bail Application needs consideration in the

backdrop of the overt act/role attributed to such Accused. The material on record is not sufficient to form a reasonable belief that, the Accused in question is guilty of the offences under this Act, to deny him bail. In this case, considering the peripheral role attributed to Accused No.1 namely his presence on the spot, the rigors of Section 21(4) would not stand in his way. In the facts and circumstances, in my view, except his criminal antecedents, there is nothing on record to deny him bail.

7. At this stage, it would be appropriate to consider the decision rendered by the Division Bench of the Bombay High Court at Nagpur Bench in case of *Akshay Atmaram Rathod V/s. State of Maharashtra, Through Sub Divisional Police Officer & Anr.*¹

8. In that case somewhat similar situation has been dealt with and considered. Paragraph Nos.27, 28 and 29 would be relevant for the purpose of addressing the issue in this case and the same are extracted below :-

27. In that regard it is submitted that the rider of sub-clause [5] would come into play if subsequently

1(2023) SCC OnLine Bom 418.

the accused commits a similar offence and not in a case where there is no material at all in the later crime.

28. We are in agreement with the submissions that the provisions of sub-clause [5] are to be read along with the condition embodied in clause 4[b] of Section 21 of the MCOCA. The prima facie requirement for grant of bail is about satisfaction of the Court that there are no reasonable grounds for believing that the accused is guilty of such offence. The provision is to be read on the canvass of earlier requirement. In above decision of State of Maharashtra [supra] [paragraph no. 63], the Supreme Court has explained that the object of MCOCA is to prevent the organized crime, and there can be reason to deny bail if one has committed a similar offence once again, after being released on bail. The legislative intention is to desist a person from released on bail. The legislative intention is to desist a person from repeating the similar offence once again after his release on bail, therefore, one has to prima facie record a finding that in existing crime, the accused has committed similar offence once again. Liberty of a person shall not ordinarily be interfered with unless there exists convincing grounds. Sub-clause[5] of Section 21 of the MCOCA has to be interpreted keeping in mind the legislative object.

29. In above part of the order we have recorded our tentative finding that there is absence of material to reasonably believe that the accused is guilty of the charged offence. Reading of sub-section [5] in that context would not confine us from exercising our judicial discretion to grant bail. The Court is not expected to mechanically reject the bail only because the accused was arrested under MCOCA, while was

on bail. Harmonious reading of the provision would achieve the legislative intent by maintaining right balance.”

9. In my view, considering the settled legal position, the bar under Section 21(5) would not get attracted in this case. The observations made by the Division Bench as above, would be applicable to the case of the Accused. Accordingly, the accused is entitled to get bail. As far as apprehension put forth by the learned APP is concerned, the same can be taken care of by imposing appropriate conditions. It is made clear that the observations in this order are for the purpose of the deciding the Bail Application, the Trial Court shall not get in any manner influenced by this observations while deciding the matter on merits. Hence following order.

ORDER

(i) The Applicant-Laxman Ganpat Lekawale be released on bail in Crime No. 44 of 2019 registered with Bhujinj Police Station, Satara, on furnishing PR bond of Rs.1,00,000/- with one or two solvent sureties in the like amount.

- (ii) The Applicant shall not tamper with the prosecution evidence and/or threaten or induce the first informant and other prosecution witness/es.
- (iii) The Applicant shall report at Bhuinj Police Station, Satara on the first Saturday of every month between 11:00 a.m. and 2.00 p.m. to mark his presence.
- (iv) The Applicant shall not threaten, induce or pressurize the prosecution witnesses and victim directly or indirectly.
- (v) The Applicant shall not indulge in commission of similar crime while he is on bail.
- (vi) Application is allowed in the aforesaid terms.

(G.A. SANAP,J.)