

SA Pathan

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

BAIL APPLICATION NO.3865 OF 2022

Prashant Dundhappa Surgade	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Umesh Mankapure a/w Ms. Bhavika Shinde, for
the Applicant.

Mr. Amit A. Palkar, APP for State-Respondent.

CORAM : AMIT BORKAR, J.

DATED : JULY 20, 2023

P.C.:

1. This is an application filed under Section 439 of the Code of Criminal Procedure, 1973, (for short 'Cr.PC.') in connection with C.R. No.124 of 2019 registered with Vishrambag police station for offences punishable under Sections 302, 307, 120-B, 109, 143, 147, 148, 149, 323, 504, 506 of the Indian Penal Code (for short 'IPC'), under Section 4 (25) (27) of Arms Act, under Sections 3(1) (i), 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act (for short 'MCOC Act').

2. According to the prosecution, the informant had received call of one Mahesh on 10 April 2019 around 8:30 pm. He called the informant near water tank at Gulab colony as they had to go to the birthday party of Guru Vankyal. The informant along with his friends Sahebrao and others went to the house of Guru Vankyal for birthday party. They all gave birthday wishes to Guru Vankyal and

thereafter, they came for taking dinner. According to prosecution, the co-accused Sachin Dongare is the head of group i.e. Joy group along with other co-accused were the member of this group. They had created terror in Sangli District. They also came for the birthday party of Guru Vankyal at about 9:15 pm. Co-accused Sachin Dongare along with his group members surrounded near the informant and his friends. The co-accused Sachin Dongare and Pravin Babar abused Mahesh Naik and Ganesh Babladi. He instigated other co-accused to kill Mahesh. Thereby Sachin Dongare, Pravin Babar and others removed weapons like knife from their shirt. The present applicant along with co-accused Riyaj Kiragi, Maruti Shinde, and others caught hold Mahesh Naik, while the persons assaulted Mahesh Naik by sharp weapons. When Ganesh Babaladi tried to separate Mahesh Riyaj Kirjagi and Sushant Kadam caught hold him and Pravin inflicted blow of knife on his chest. They threatened other witnesses. By seeing the incident, the persons gathered started running from there. The informant with the help of other eye witnesses brought the injured to civil Hospital, Sangli where Mahesh Naik succumbed to injuries. Therefore, the informant approached the respondent police station and lodged FIR against the accused persons including applicant.

3. The applicant was arrested on 11 April 2019. The provisions of MCOC Act are applied. The investigating agency was carried out the investigation.

4. According to learned Advocate for the applicant that he has been falsely implicated. He was not present on the spot at the time of incident. The role attributed to the applicant is of catching hold

of Mahesh Naik (deceased) and assaulted him by fist and blows. Considering the cause of death and nature of injuries suffered by the deceased, role attributed to the applicant has not resulted in the death of the deceased. Applicability of Section 34 or 149 of IPC needs to be adjudicated at the time of trial. Applicability of MCOC Act is the only one for that the report was lodged against the applicant which is individualistic in nature for connected with gang members. The allegations against the applicant will not fall within expression of crime continuously unlawful assembly.

5. *Per contra*, learned app submitted that the applicant has played active role by catching hold of the deceased. He assaulted the deceased with fist and blows. He had common object of committing murder of the deceased. The material on record is sufficient to apply provisions of MCOC Act.

6. On perusal of the charge sheet, it appears that the informant along with other witnesses have attributed role of catching hold of deceased Mahesh Naik. The role attributed to the applicant is also of assault by fist and blows. The cause of death due to chest injury. *Prima facie*, it appears that the previous offence registered against the applicant is individualistic in nature. No offence is registered along with other gang members. This present offence is the only offence alleged to be committed along with the gang. Therefore, there is reasonable likelihood that the applicant may not be guilty of the alleged offence. Considering the nature of earlier offence and role attributed to the present applicant. There is possibility of the applicant may not commit such offence, if he is released on bail. The applicant was arrested on 11 April 2019. Charges are yet

to be framed. The trial is likely to be completed.

7. On overall considering the factors referred above, the applicant made out the case for relief under Section 439 of Cr.P.C. Hence, following order is passed:

- a) The application is allowed.
- b) The applicant Prashant Dundhappa Surgade be released on bail in connection with C.R. No.124 of 2019 registered with Vishrambag police station for offences punishable under Sections 302, 307, 120-B, 109, 143, 147, 148, 149, 323, 504, 506 IPC, under Section 4 (25) (27) of Arms Act, under Sections 3(1)(i), 3(1)(ii), 3(2), 3(4) of MCOC Act, on furnishing PR. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.
- c) The applicant shall mark his attendance with the concern police station on first Saturday of each month between between 11:00 am to 2:00 pm till conclusion of trial.
- d) The applicant shall remain present before the trial Court on each date unless specifically exempted by the Trial Court.
- e) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court.
- f) The applicants shall, at the time of execution of the

bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case.

8. The bail application stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)