

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 277 OF 2022**

Santosh Kashinath DhaneApplicant

Versus

The State of Maharashtra ...Respondent

Mr. Rahul Arote , Advocate for the Applicant.

Ms. Anamika Malhotra, APP for Respondent-State.

CORAM : SHIVKUMAR DIGE, J.

DATE : 12th SEPTEMBER, 2023.

P.C. :

1. By this Application, the Applicant is seeking bail in Crime No.242 of 2019 registered with Byculla Police Station, Mumbai for the offences punishable under Sections 302,341, 365, 506(2), 323, read with 34 of Indian Penal Code (“IPC”, for short) and Sections 4, 25 of the Arms Act and Section 37(1) (a), 135, 142 of the Maharashtra Police Act and Sections 3(1) (i), 3(ii), 3(2), 3(4) of the Maharashtra Control of Organized

Crime Act, 1999 (“MCOC”, for short).

2. It is the prosecution’s case that, on 12th August 2019 Accused Sushant Salunkhe and other three co-accused kidnapped Ganesh Pol in taxi No. 965 and killed him. It is alleged that the taxi, in which Ganesh was kidnapped is belongs to the applicant. It is alleged that applicant was part of conspiracy to kill the Ganesh.

3. It is contention of learned counsel for the Applicant that, allegations against the Applicant are that, he was part of conspiracy to kill the Ganesh his Motor Taxi was used in the said Crime.

4. Learned counsel further submitted that, in confessional statement co-accused Rupesh Bhawankar has stated about the role of Applicant, but he has not stated that Applicant was part of the conspiracy to kill Ganesh. At the time of incident Applicant was not present. Moreover, Applicant has no antecedent nor he is member of crime syndicate. He is behind bar for more than four years. Hence requested to allow the

Application.

5. Learned APP submitted that, the motor taxi used in the crime was belonging to Applicant. In confessional statement, co-accused, has specifically stated that, Applicant was part of conspiracy, it shows his involvement in the crime. Though Applicant was not present at spot of incident but he had hatched the conspiracy to kill Ganesh. If he is released on bail he may threaten the prosecution witnesses or may abscond. Hence requested to reject the Application.

6. I have heard both learned counsel. Perused FIR and charge-sheet.

7. Admittedly, Applicant was not present at the spot of incident when other co-accused kidnapped and assaulted the Ganesh to death.

8. It is alleged that, Applicant was part of conspiracy to kill Ganesh. In confessional statement, co-accused Rupesh Sarwankar has stated that on 11th August, 2019 when he reached Worli Dairy compound, applicant and co-accused were

present. After some time Applicant and Salunke left the said spot, then they made plan to kill Ganesh. It does not show that Applicant was part of conspiracy, though the motor taxi of Applicant was used in the crime but he was not present at the time of incident nor from the confessional statement of co-accused Rupesh Sarwankar indicates that he was not a part of conspiracy. Applicant is behind bar more than four years. Considering the above facts, his further detention is not required.

9. In view of above, I pass following order.

ORDER

(i) The Applicant be released on bail in Crime No. 242 of 2019 registered with Byculla Police Station, Mumbai on furnishing PR bond of Rs.30,000/- with one or two sureties in the like amount.

(ii) After his release from jail the Applicant shall attend the Byculla Police Station, Thane once

in a month i.e. on every 1st Monday of the month between 11.00 a.m. to 3.00 p.m. till framing of charge.

(iii) The Applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

(iv) The Trial Court shall decide the case of its own merits and in accordance with law, uninfluenced by the observations made in this order.

(v) Application is allowed in the aforesaid terms.

(SHIVKUMAR DIGE, J.)