

CRIMINAL BAIL APPLICATION NO.409 OF 2022

Anand Narhari Phadtare ... Applicant
V/s.

The State of Maharashtra and Ors. ... Respondents

Mr. Tapan Thatte a/w. Mr. Vivek Arote, for applicant.

Ms. Pallavi N. Dabholkar-APP for State.

CORAM : G.A. SANAP, J

DATE : 30th October 2023.

PC:

1. The accused-applicant no.2 has made this application for bail in C.R No. 230/2019 registered with D.C.B., CID (Vikhroli Police Station in CR No. 509/2019) for the offences punishable under sections 307, 452 and 120(B) of IPC read with sections 3, 25, 5, 27 of the Arms Act read with Sections 37(1) (a) and 135 of M.P. Act read with Section 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (for short 'MCOC Act')

2. Learned advocate for the accused no. 2 submitted that in this case accused no. 10 having similar role has been released on bail. He further submitted that mother of the gang leader accused no. 11

has been granted bail. Learned advocate pointed out number of crimes registered against the accused no. 11 with her son Prasad Pujari who is a Gang Leader. Learned advocate submitted that the only role attributed to accused no.2 is that before commission of the crime of the assault on the informant, the accused no. 2 had provided a motor cycle to the assailants. Learned advocate submitted that the main accused i.e. accused no. 3 who accompanied the main assailant on the motor cycle has made a confessional statement and in the said confessional statement he has not attributed any role to accused no. 2 in the commission of assault as well as any role preparatory to the commission of assault. Learned advocate submitted that the CDR relied upon by the prosecution may not be relevant at this stage for the purpose of deciding the role of accused no. 2. Learned advocate pointed out that the evidence of CDR has been relied upon by the prosecution against the accused no. 10. Learned advocate pointed out that the learned Special Judge has appropriately dealt with the objection raised by the prosecution, relying upon the CDR of accused no. 18. In short, learned advocate submitted that considering the role attributed to the accused, the evidence compiled in the charge-sheet against him and the fact that similarly circumstanced accused has been

released on bail, this accused on the ground of parity deserves to be released on bail. Learned advocate for the accused no. 2 submitted that accused no. 2 has no criminal antecedents.

3. Learned APP submitted that the role of accused no. 2 in the teeth of the evidence available on record, by no stretch of imagination could be compare with the role played by accused no. 10 and accused no. 9. Learned APP submitted that the material complied in charge-sheet is *prima facie* sufficient to make out the offences under the MCOC, Act against the accused and therefore he cannot be released on bail. Learned APP submitted that he was part of crime syndicate which was headed by the Gangster Prasad Pujari. APP submitted that direct involvement of the accused no. 2 being the facilitator in the commission of a crime has been established.

4. In order to appreciate the rival submissions, the case of prosecution unfolded from the report lodge by the informant needs to be stated in brief. It is case of prosecution that the informant was engaged in construction of building and on 22nd June 2018 old building was demolished for construction of a new building. At that time he received a message from international mobile number of wanted accused Prasad Pujari and said Prasad Pujari demanded a sum

of Rs. 1 Crore and extended threat of dire consequences if the amount was not paid. The informant on account of his financial difficulties could not comply the demand. It is stated that instead of Rs. 1 Crore the informant had agreed to pay Rs. 10 lakhs. The inability of the informant to make payment and succumb to the pressure of gang leader led to unfortunate assault on him by accused no. 4. Accused no. 3 accompanied accused no. 4 on motor cycle.

5. It is seen that during the course of the investigation, the accused no. 3 made a confessional statement. In his confessional statement he has narrated the role played by accused no. 2. It is seen that, save and except the act of providing a motor cycle to the accused nos. 3 and 4, no other role was attributed to the accused no. 2. The question is whether on the basis of this role attributed to the accused, he could be said to be a member of the crime syndicate of which Prasad Pujari is a gang leader. There is no evidence on record at this stage to suggest that the accused no. 2 was directly in contact with the gang leader Prasad Pujari. The prosecution has relied upon the CDR of his Mobile Phone. On the basis of the CDR it is contended that before commission of actual crime he was in contact with the accused persons involved in this crime. It is to be noted, at this stage, that the same role

was attributed to accused no. 10. The CDR of the mobile phone of accused no. 10 has been relied upon by the prosecution to establish his complicity in the commission of a crime with co-accused. Perusal of the bail order of accused no. 10 would show that the learned Special Judge after appreciating the CDR opined that the CDR alone could not stand in the way of the accused no. 10 to get the bail.

7. It is undisputed that the accused no. 2 has no criminal antecedents. The accused no. 9, who is the mother of gang leader Prasad Pujari has been released on bail. It is seen that number of crimes have been registered against her with gang leader Prasad Pujari for the offences under the IPC as well as under the provisions of the MCOC, Act. It is seen on perusal of the record that the role attributed to the accused no. 9 in this case was that she was instrumental in providing money to the accused persons involved execution of the plan.

8. In my view, considering the material available on record against the accused no. 2 and the role attributed to him he would be entitled to put forth the ground of a parity with the accused nos. 10 and 9. Accused no. 2 has no criminal antecedents. He has a simply made motor cycle available to the assailant. The perusal of the

confessional statement would show that the accused no. 3 has not stated that accused no. 2 aware of the conspiracy and plan.

9. In the facts and circumstance in my view subject to suitable conditions bail can be granted to the accused. In the teeth of the material against him complied in the charge-sheet and the role attributed to him, his further incarceration may not be warranted. Hence, the following order:-

ORDER

- a) The applicant-Anand Narhari Phadtare in connection with C.R. No. 230/2019 registered with D.C.B., CID (Vikhroli Police Station in CR No. 509/2019) shall be released on bail on furnishing P.R. bond to the extent of Rs. 50,000/- with one or more sureties of the like amount.
- b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant should not tamper with evidence.
- c) The applicant shall mark his attendance with the concerned Investigating Agency, on Thursday of every week between 3.00p.m. and 5.00 p.m. The applicant shall attend the trial on regular basis.
- d) On being released on bail, the applicant shall furnish his contact number and residential address to the

Investigating Officer and shall keep him updated, if there is any change.

The application is allowed and disposed of in the aforestated terms.

(G.A. SANAP, J)