

AGK

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

BAIL APPLICATION NO.713 OF 2023

Vaibhav Alias Sonya Arun Khondge ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr. Satyavrat Joshi i/by Ms. Shivani Kondekar for the applicant.

Mr. Pandurang H. Gaikwad, APP for the respondent/
State.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 18, 2023

P.C.:

1. This is an application under Section 439 of the Criminal Procedure Code, 1973 seeking bail in connection with Special MCOCA Case No.863 of 2021 for offence punishable under Sections 302, 120-B, 201, 216, 143, 147, 148, 149 of the Indian Penal Code, 1860 and Section 4 read with Sections 25 and 27 of the Arms Act and Section 37 read with Section 135 of the Maharashtra Police Act along with Section 3(1)(i), (ii), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (hereafter “MCOC Act” for short).

2. According to prosecution, the deceased Atul Tanaji Bhosale residing at Mhalunge, Taluka Khed, District Pune was engaged in

the business of supplying water tankers. The accused Akshay Ashok Shivale is also engaged in same business. The accused had dispute with Atul Bhosale out of said business of supplying water tankers. On 14 May 2021 at about 16.30 hours, Atul Bhosale was standing in front of Mamata Sweet Mart at Mouje Mhalunge Gaon, Taluka Khed, District Pune. At that time, accused Akshay Shivale, Ganesh Dharmale, Gotya Bhalerao and 2-3 co-accused assaulted Atul Bhosale by means of sickle, causing serious injuries. While injured was shifted to hospital, he succumbed to injuries during treatment. Thus, they committed the murder of Atul Bhosale. After the incident the assailant/accused washed their clothes with intention to destroy the evidence. The rest of the accused helped the assailants in harbouring them as well as in fleeing away from the spot of incident.

3. It is further alleged by prosecution that on report lodged by informant Akshay Pandit Borhade, Crime No.578 of 2021 came to be registered for the offence of murder of Atul Bhosale by hatching conspiracy for offences under Sections mentioned above. During investigation, it was revealed that accused Santosh Madhukar Manjare is the gang leader and rest of the accused including present applicant are the members of organised crime syndicate. They are engaged in continuing unlawful activities. Accordingly, a proposal was sent to prosecute them under MCOC Act. After sanction, the provisions of MCOC Act came to be added.

4. It is further alleged by State that the offence is very serious. During investigation it was revealed that on 14 May 2021 before committing the murder of Atul Bhosale, the accused had

unlawfully assembled at Gajanan Gas Repairing Shop. At said spot the accused had hatched the conspiracy and designed the plan to commit murder. The applicant/accused Vaibhav Khandge is seen in CCTV footage along with the main accused, at said Gajanan Gas Repairing Shop when the conspiracy was being hatched and proceeding to commit murder of Atul Bhosale after said conspiracy. There are eye witnesses to the incident. There is strong evidence in the form of CCTV footage. Confessions of applicant and co-accused are recorded during investigation showing the involvement of present applicant in the crime. Weapons used in the crime are seized at the instance of arrested accused. The motorcycles used in the crime are also seized. The mobile communication between the applicant and co-accused and its tower location on the spot of incident has been revealed.

5. The applicant filed application under Section 439 of the Criminal Procedure Code, 1973 before the learned Additional Special Judge under MCOC Act, Pune which came to be rejected by order dated 17 December 2022. The applicant, therefore, filed present bail application.

6. Learned Advocate for the applicant submitted that except applicant's confessional statement, confessional statement of accused No.9 and CCTV footage, there is no material on record to implicate the applicant in alleged crime. The applicant has no criminal antecedents to his discredit. The Test Identification Parade conducted by the prosecution is contrary to the settled principles of law and, therefore, if such material regarding identity of the applicant is excluded, there is no material to indicate connection of

the applicant with the crime. In absence of specific role or any active role, the applicant deserves to be released on bail as CCTV footage indicates applicant leaving spot of Gajanan Gas Repairing Shop on motorcycle.

7. Per contra, learned APP objected for release of the applicant submitting that the applicant is part of gang against whom large number of cases have been registered. The CCTV footage indicates applicant leaving Gajanan Gas Repairing Shop on motorcycle after conspiracy was hatched by nine persons as indicated in the confessional statement of co-accused Saurabh Sonawane. Confessional statement of Saurabh Sonawane indicates prima facie that the applicant was part of agreement to commit murder of the deceased and in furtherance of such agreement, he accompanied Saurabh on motorcycle and was present on the spot and left the spot after the incident of murder. Call Detail Report (CDR) of the present applicant supports the case of the prosecution. The learned APP, therefore, prayed for rejection of the bail application.

8. On perusal of the charge-sheet, affidavit in reply filed by the prosecution and other material on record, it appears that the deceased was murdered brutally in broad day-light. Confessional statement of Saurabh Sonawane indicates prima facie that there was agreement between nine members of the gang including applicant to commit murder of the deceased. The CCTV footage indicates applicant leaving along with Saurabh Sonawane place of Gajanan Gas Repairing Shop where conspiracy was hatched. It, prima facie, therefore, appears that the applicant in furtherance of conspiracy accompanied Saurabh Sonawane till the spot of

incident and was present on the spot of incident when the brutal assault took place and thereafter left. The Test Identification Parade is prima facie sufficient to implicate the applicant. The validity of Test Identification Parade, confessional statement and CCTV footage needs to be adjudicated during trial. However, based on prima facie material, nexus of the applicant with the gang is evident. Therefore, the rigours of Section 21(4) of the Maharashtra Control of Organized Crime Act, 1999 are attracted.

9. The applicant has failed to make out a prima facie for grant of relief under Section 439 of the Criminal Procedure Code, 1973. The bail application, therefore, stands rejected. No costs.

(AMIT BORKAR, J.)