

SA Pathan

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

BAIL APPLICATION NO.764 OF 2023

Mardani Akbar Bhosale	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Anand S. Shalgaonkar a/w. Mr. Kuldip Pawar a/w.
Ms. Chandni Sachade, for the Applicant.

Mr. Pandurang H. Gaikwad, APP for the State-
Respondent.

Mr. Amol Dnyandeo Narute, PI, Baramati police
station.

CORAM : AMIT BORKAR, J.

DATED : JUNE 26, 2023

P.C.:

1. This is an application filed under Section 439 of the Code of Criminal Procedure, 1973, (for short 'Cr.P.C.') in connection with CR No. 179 of 2019 registered with Baramati police station, Baramati, District Pune for offence punishable under Sections 395, 307, 452, 323, 504, 506 of the Indian Penal Code (for short 'IPC') and under Section 3(25) of Arms Act and under Section 3(1)(ii), 3(4) of the Maharashtra Control of Organized Act, 1999 (for short 'MCOCA')

2. The gist of the prosecution case is as under:

On 16 February 2019, one Satish Khandu Lokhande, agriculturist and vegetable vendor lodged a report alleging that he

owns agricultural land at Jadhav Vasti Zargadwadi, Taluka Baramati. He himself along with his wife are cultivating the said land. Accused persons are having agricultural land adjacent to informant's land. Accused are relatives as they belong to Pardhi community. The accused persons are habitual for committing various offence. They have created terror in the village and therefore, no one is ready to file complaint against them.

On 11 February 2019 at about 12 noon, the informant's wife went to Baramati for selling vegetables. Due to earlier incident of theft, the informant concealed himself behind the shrubs near the agricultural land with a view to apprehend the real culprits. At about 5 pm., the present applicant along with other co-accused entered his agricultural land. The applicant and other co-accused were picking up the pumpkins and packing in gunny bags, the applicant approached them and questioned about their illegal act. At that time the applicant threatened him of lodging report of outraging their modesty and under the Atrocities Act. They forcefully took away pumpkins. The informant returned his home at around 6:30 pm and informed his wife about the incident. At that time present applicant and other co-accused committed house tress-pass. The co-accused Bembtya took out pistol and put it on the chest of informant and threatened to kill him. Another co-accused Datta Bhosale punched him, due to which he fell down. The applicant with another co-accused assaulted the informant's wife by fist and kick blows. The accused persons forcibly took away cash of Rs.1,820/- earned by the informant's wife by selling vegetables. They also forcibly took away Rs.6,000/- from cupboard

and threatened to file proceedings under Atrocities Act against the informant, if he lodged complaint against them. Since informant got to know about arrest of co-accused persons in another offence he mustered courage and approached the police and lodged the report. The applicant arrested on 8 May 2019.

3. The applicant filed application under Section 439 of the Code of Criminal Procedure, 1973 before the Special Judge, which came to be rejected by order dated 25 February, 2020. Aggrieved thereby, the applicant has filed present application.

4. According to learned Advocate for the applicant, the material on record as regards report in question attributing role of opening of cupboard along with accused No.8 and taking cash does not inspire confidence. According to him the applicant has been falsely implicated as she belongs to Pardhi community. Earlier two reports lodged against the applicant along with gang leader do not contain active role attributed to the applicant. She has one child with her in jail as is likely to attain 5 years. According to jail rules child of more than 5 years cannot be kept with the inmate. He submitted that another child of the applicant is completely handicapped and she needs to take care of her second child also.

5. Per contra, learned APP submitted that the material on record is sufficient to indicate applicant's nexus with the gang. Three offences are registered against the gang leader wherein the applicant is co-accused. One of the witness has filed the complaint with applicant's relatives have threatened him in the premises of District Court while he was about to depose against the applicant.

Therefore, there is possibility that the applicant will threaten the witnesses.

6. On perusal of material on record in the form of charge-sheet, it appears that the applicant has nexus with the gang led by the co-accused. C.R. Nos.505 of 2018 and 463 of 2018 have been registered against the gang leader and other gang members for committing similar offences under Section 395 of IPC and other offences.

7. According to learned Advocate for the applicant, the report of earlier alleged offences indicate that the applicant accompanied with other co-accused, but no active role was attributed to the applicant.

8. Prima facie to establish nexus under the provisions of MCOC Act, it is necessary to show accused to be part of gang, therefore, at this stage applicant having being arraigned as accused in the offences registered against gang leader and allegations that she accompanied with the gang leader while committing the offences, is sufficient to show her nexus with gang leader and gang.

9. Moreover, the complaint filed by the witness who is deposing against the applicant and other co-accused in the pending trial, stating applicants relatives are threatening witnesses in the Court premises is also relevant circumstance to be considered. At this stage to rule out possibility of witness being threatened or intimidated, in my opinion, the applicant cannot be released under Section 439 of Cr.PC.

10. Considering nature of offence alleged against the applicant

i.e. under the provisions of MCOC Act, plea based on the inconvenience caused to the children in the facts cannot be a ground to release the applicant. Therefore, there is no merit in the application.

11. The bail application is, therefore, rejected. No costs.

(AMIT BORKAR, J.)