

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

BAIL APPLICATION NO. 1236 OF 2021

Vijay Shivaji Phakade	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Nitin H. Sejpal a/w Mrs. Pooja N. Sejpal and Ms. Akshata Desai -
Advocate for the Applicant

Mr. S. R. Agarkar - APP for the Respondent-State
API Praveen Ghutugade – Ulhasnagar Police Station

CORAM : S. M. MODAK, J.

DATE : 25th JULY, 2023

P. C. :-

1. Heard learned Advocate Shri Sejpal for the Applicant and
learned APP. Officer from Ulhas Nagar Police Station is present.

2. Bail is asked on two grounds. First one is on merits and
second one is on account of prolonged detention, since 2015 and yet
charge is not framed. Initially, an offence was registered only under
Section 302, 386, 201, 120-B, 212 read with 34 of the Indian Penal
Code and under Section 3 read with 25 and Section 27 of the Indian
Arms Act. There is charge sheet filed in those offences and it is
pending before the Court of the Additional Sessions Judge, Kalyan.

There is reference to that effect in para no.10 page no. 260 of the

affidavit in reply. It was filed against in all 12 accused persons including the present Applicant. Its copy is tendered on record and marked as 'Annexure-X'.

3. The approval to invoke the provisions of the Maharashtra Control of Organized Crime Act was granted and sanction is also granted on 22/01/2016 against in all 12 accused persons. The offence is investigated by Assistant Commissioner of Police Ulhas Nagar.

4. The charge-sheet is also filed and it is pending before the Court of the Special Court, MCOC, Thane. It is true that there is reference of offence under Section 302, 386, 201, 120-B of the Indian Penal Code, Section 3 (25) and 7(27) of the Indian Arms Act and under Section 37(1) read with 135 of the Bombay Police Act and under Section 3(1)(i), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act in the charge sheet at page no. 17.

5. Learned Advocate Shri Sejpal submitted that in fact both the charge sheets ought to have been clubbed together. The process is going on. Both the charge-sheets are pending before different Courts. In the prayer clause of this application, reference of Special Case No. 3 of 2016 is only given. There is no reference of the charge-

sheet pending before the Court of the Additional Sessions Judge, Kalyan. Liberty is sought to add those case details in the prayer clause. Let amendment be carried out forthwith. My attention is invited to **page no. 37** from the compilation of the application. It is true that there is reference of following details :-

- a) C.R. No. 229 of 2015 registered with Ulhas Nagar Police Station.*
- b) RCC Case No. 998 of 2015*
- c) There is case no. 16 of 2016.*

6. In the charge-sheet on page no. 17, there is reference of C.R. No. 229 of 2015. This situation has cropped up because an approval was granted on 22/01/2016. Page no. 53 and sanction on 01/03/2016. Page no. 51.

7. With the assistance of both the sides, I have perused the charge-sheet. I have also perused the affidavit-in-reply. F.I.R. is lodged on 11/09/2015 by one Ashok Atmaram Karira, as his brother Sachanand Karira was killed by two unknown persons by firing. At that time, they were sitting in their office. The assailants came on motor cycle. Initially, an offence under Section 307 read with 34 of the Indian Penal Code and under Section 25 of the Indian Arms Act

was registered.

8. Learned APP pointed out the following materials showing the involvement of this Applicant:-

- (a) It was disclosed that on the instructions of earlier wanted accused-Suresh Pujari who is arrested later on, Sachanand Karira was killed as he has refused to fulfill his demand for money.
- (b) During investigation, roles of different accused were unearthed.
- (c) It was revealed that the amount transferred in the bank account of the present Applicant-Vijay, co-accused Nitin and another-Vijay.
- (d) It was further disclosed that the weapons and the motor cycle were supplied to the co-accused Nitin.
- (e) It was further disclosed that the co-accused-Nitin and present Applicant-Vijay went to the spot on motor cycle and the present Applicant locked the door of the office and he was possessing the gun and co-accused-Nitin fired bullet from his pistol. (Para no. 7 of the affidavit.)
- (f) There is CCTV footage collected on 11/09/2015. It is collected in the pen drive. I have read it. It mentions that two unknown persons have fired and left the office of the deceased. This was produced by the first informant.
- (g) Ground No. 2 of the affidavit mentions that accused

Nitin is identified in that CCTV footage.

- (h) There is statement of one witness by name Firdos Ajar Siddiqui recorded on 11/09/2015 who has seen incident. However he could not identify assailants.
- (i) There is one statement of one Mahesh Shankar Shirsagar dated 11/09/2015 who runs hair cutting saloon. Co-accused Nitin Avaghade and present Applicant visited his saloon on 12/09/2015 and they have cut their hair.
- (j) Two guns and 16 live cartridges were recovered at the instance of the present Applicant.
- (k) There are CDRs showing communication in between the Applicant and co-accused.
- (l) There are in all eight cases against the present Applicant. They are mentioned in para no. 8 of the affidavit.
- (m) Chart is annexed to the affidavit showing the details of those cases.

9. As against this, learned Advocate Mr. Sejpal invited my attention to the following documents:-

- a) The recovery of those fire arms as per the memorandum statement dated 20/10/2015. However it is not prosecution case that they were used while firing bullets.

- (b) The test identification parade conducted on 06/11/2015 wherein the present Applicant and co-accused Nitin were asked to stand in the parade and witness Firdos Ajgar Siddiqui has not identified the present Applicant. Reference is there on para no. 4 of that panchnama. This is produced by Mr. Sejpal from the record and charge-sheet filed before Kalyan Court.
- (c) Certain bail Orders passed by the Court of the Special Judge they are on page no. 197 to page no. 235.
- (d) This Court has granted bail to co-accused Pravin Pundalik Patil, at page no. 201 and co-accused Prashant Dilip Sapkal, at page no. 231.

10. Whereas learned APP submitted that bail was granted to those co-accused considering their roles, whereas role of the present Applicant is different.

11. It is true that role against the present Applicant is that of accompanying co-accused Nitin. Even though there is recovery of the fire arm at the instance of the present Applicant, it is matter of record that in the parade, he is not identified. Except that no other materials are pointed out to me to show his involvement. He is behind bar since 2015.

12. It is true that the Hon'ble Supreme Court and this Court

in various orders have granted bail to co-accused who is behind bar since long with out trial. It is no doubt true that the period of the detention may differ from case to case. In this case he is behind bar since 2015. If the bail is asked for and one of the ground is long incarceration, the bar under Section 21 of the MCOC Act will not come into play. So Applicant has made out the case for grant of bail.

13. It is true that cases are pending before the Special Court, Thane as well as Sessions Court, Kalyan. The prayer is for grant of bail in both these cases. Because both the cases are arising out of same offence. Certain directions are required. Hence Order:-

ORDER

- (i) Bail application is allowed.
- (ii) The Applicant- Vijay Shivaji Phakade arrested in connection with MCOC Special Case No. 3 of 2016 pending with the Special Court under MCOC Act, Thane and in Sessions Case No. 16 of 2016 pending with Additional Sessions Judge, Kalyan of arising out of C.R. No. I-229 of 2015 registered with Ulhasnagar Police Station be released on bail on furnishing personal bond and surety bond in sum of Rs. 50,000/-.
- (iii) Applicant is directed to co-operate the Police as and when required.
- (iv) He is directed to give surety who is having resident of

Thane District.

(v) Applicant shall not threaten the prosecution witnesses.

(vi) Bail to be furnished before the Special Court, Thane.

14. The Court of the Special Judge, Thane is directed to inform the Court of the Additional Sessions Judge, Kalyan that Applicant has furnished bail before him and in that eventuality the Court of the Additional Sessions Judge, Kalyan is directed to inform the concerned jail.

15. Application is disposed of in the aforesaid terms.

16. All the parties to act on an authenticated copy of this Order.

[S. M. MODAK, J.]