



Diksha Rane

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

BAIL APPLICATION NO.1087/2023

SHAMBHURAJ SHAMRAO KHILARE ..APPLICANT

VS.

THE STATE OF MAHARASHTRA ..RESPONDENT

Adv. Sharad T. Bhosale for the applicant.
Ms. Rutuja Ambekar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 6, 2023.

P.C. :

1. Heard learned counsel for the applicant. Learned APP for the State opposed the application for bail.

2. This is an application for bail. There are in all eleven accused. The applicant is the accused No.6 in respect of the offence punishable under Sections 302, 120-B, 307, 326, 324, 323, 141, 143, 144, 147, 149 of the Indian Penal Code (hereafter 'IPC' for short) read with Sections 4 and 25 of the Indian Arms Act read with Section 37(1) of the Criminal Law Amendment Act read with Sections 3(1)(i), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereafter 'MCOCA', for short), registered on 16/9/2021 vide

C.R. No.802/2021 with Kondhwa Police Station, Pune.

3. The case of the prosecution is that :-

That on 15/9/2021, at about 9:15 pm to 9:30 pm at near Coffee Jar Hotel, Cloud 9 Society Road, Kondhwa, Pune, complainant Sonu Rasal, deceased Suraj Rasal and their friends Akshay Kumbhar, Rajesh More, Rameshwar Sakhare, Shubham Bedarkar were all ready waiting while two of their other friends namely Pradip Thite, Nitin Patil also joined them and had a conversation with deceased for 15 to 20 minutes. Later 5 to 6 bikers came there namely Chirag Shewale, Nitin Lohar, Sunil Zare, Akash Kale, Rushabh Shewale, Dhananjay, Rutik Sasane, Tinu Mathew and 2-3 others and they stopped near them. Tinu Mathew and Dhananjay had plastic pipe in their hands, Chirag Shewale, Nikhil Lohar, Sunil Zare were holding Koyta in their hands. Whereas Akash Kale, Rushabh Shewale were holding wooden bamboos in their hands. Rutik Sasane had a steel pipe in his hand. They attacked the complainant and deceased with intention to kill/commit murder of the said victim with above mentioned weapons. After that they ran away from the spot of incident.

4. So far as the applicant is concerned, it is alleged that the applicant was providing all the details as to the movements of the deceased to the co-accused. Learned APP submitted that it is the applicant who provided the live location of the deceased after he was enlarged on bail in respect of the offence which was registered against the deceased. Apart from the contentions raised in the affidavit-in-reply opposing the application for bail, learned APP submitted that two accused are still absconding and therefore, the applicant should not be enlarged on bail. It is further submitted that against the gang leader Rushabh Shewale there are as many as four offences registered of which three of them are under Section 307 of the IPC.

5. The applicant was arrested on 28/9/2021 and now is in custody for two years. So far as the present applicant is concerned, the present C.R. is only offence in common with the other accused and the gang-leader.

6. In the affidavit-in-reply filed on behalf of the respondents affirmed by Shri Shahuraje Salve, Assistant Commissioner of Police, it has been stated that the applicant has a past criminal antecedent in respect of the

C.R.No.111/2018 registered with Kondhwa Police Station for the offence punishable under Sections 324, 323 read with 34 of the IPC. The applicant has been acquitted in the said C.R.No.111/2018. The said C.R.No.111/2018 was an individual offence and prima facie, it does not appear that the same has any connection with the activities of the organized crime syndicate. In my opinion, in the facts and circumstances of the present case, the applicant can be enlarged on bail.

7. The investigation is complete. The charge-sheet has been filed. There are no criminal antecedents reported against the applicant. The applicant does not appear to be a flight risk. In the facts and circumstances of the present case, considering that the applicant is in custody for more than two years as an undertrial, considering the applicant's role coupled with the fact that the present offence is only the offence common with the gang-leader, the applicant can be enlarged on bail by imposing stringent conditions. I am satisfied that the hurdle of twin conditions in Section 21 of the MCOC Act can be overcome. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Shambhuraj Shamrao Khilare in connection with C.R. No.802/2021 registered with Kondhwa Police Station, Pune. shall be released on bail on his furnishing P.R. Bond of Rs.50,000/- with one or more local sureties in the like amount.
- (c) The applicant shall attend the Investigating Officer of Kondhwa police station, Pune, twice a month, every first and third Monday of the month, between 10.00 a.m. and 1.00 p.m. till the trial concludes.
- (d) The applicant shall not leave the jurisdiction of Pune District without permission of the trial Court till the trial concludes.
- (e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.
- (f) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(h) The applicant shall surrender his passport, if any, to the investigating officer.

8. The application is disposed of.

(M. S. KARNIK, J.)