

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1935 OF 2022

Vijay Balu Gophane

....Applicant

Versus

The State of Maharashtra

....Respondent

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Mr. Kuldeep S. Patil i/b. Ms. Manisha Devkar and Mr. Prashant
Hagare for the Applicant.

Ms. P. N. Dabholkar, APP for the Respondent – State.

Mr. Ganesh Ingale, sub-divisional Police Officer present.

PI Sachin Nikam, Bhigwan Police Station present.

CORAM : G. A. SANAP, J.

DATE : 29th NOVEMBER, 2023.

P.C. :

1. The applicant – accused No.2 has made this Application for bail for the offences punishable under Sections 307, 397, 452, 427, 506, read with Section 34 of the Indian Penal Code, 1860, under Sections 3(25) of the Arms Act, 1959 and Sections 3(1)(ii), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short ‘MCOC Act’).

2. I have heard the learned advocate for the applicant / accused no.2 and the learned APP for the respondent - State.

3. Learned advocate for the applicant submitted that accused no.2 has been falsely implicated in this case. Learned advocate further submitted that there is no iota of evidence to establish complicity of the accused in the crime and more particularly for the offences punishable under the provisions of the MCOC Act. Learned advocate submitted that criminal antecedents have been taken into consideration by the learned Judge to reject his Application. Learned advocate submitted that this is the only case where the MCOC Act has been invoked against accused no.2. Learned advocate pointed out that the offences relied upon by the prosecution to establish his criminal antecedents are under the Indian Penal Code, 1860 and therefore in this case on the basis of the same, bail cannot be denied to the accused. Learned advocate further submitted that in this crime, accused - Shubham Omkar Kharade attributed with the identical role has been released on bail and therefore on the ground of parity, the accused is entitled to get bail. Learned advocate further submitted that the possibility of completion of trial in the near future is bleak and therefore

indefinite incarceration of accused no.2 would encroach on his liberty. He further submitted that the accused is ready to abide by the conditions that may be imposed by this Court.

4. Learned APP submitted that the crime is serious. Learned APP pointed out that the accused with the gang leader assaulted the informant. It is pointed out that an iron rod was recovered at the instance of accused no.2. Learned APP further pointed out that this is the second crime registered against the accused persons on the report of the informant. Learned APP submitted that apart from this crime, seven more offences have been registered against accused no.2, which are serious offences relating to human body. Learned APP submitted that the ground of parity is not available to accused no.2 in as much as role played by accused - Shubham Omkar Kharade is totally different. Learned APP pointed out that with gang leader, accused no.2 played very vital role on the spot. Learned APP pointed out that the accused persons have created terror in the minds of the people in the locality and as such, release of accused on bail is not in the interest of the society including the informant and the witnesses.

5. I have gone through the records and proceedings. I have perused the order passed by the learned Special Judge. Learned

Special Judge has recorded the reasons for rejection of bail Application made by the accused. It is undisputed that the provisions of the MCOC Act have been invoked against the accused. Accused no.1 is a gang leader. Accused no.2 in furtherance of common intention with accused no.1 mercilessly assaulted the informant and other family members with deadly weapons. The informant and his wife sustained multiple grievous injuries. The offence under Section 307 is a major offence in this case. On going through the record and proceedings, in my opinion, the crime committed by the accused by applying any standard is a serious crime. The accused persons, have second time assaulted the informant and his family members. In respect of the first incident, a separate crime was registered against accused persons. In respect of the said crime, criminal trial is going on. It is apparent from the face of the record that the position of the informant and his family members is vulnerable. It can be seen that they are the soft target of the accused persons. The indulgence of accused no.2 with other accused in identical crime indicates his state of mind. The criminal antecedents of accused no.2 are therefore required to be appreciated keeping all these facts in mind. On considering the role played by the accused in this case and his antecedents, in my view

the learned Special Judge was right in rejecting his bail Application on these grounds.

6. The charge-sheet has been filed. Charges are not yet framed. The accused persons would be at liberty to make an Application, if so advised before the learned Special Judge for expediting the hearing of the case. In this case, the provisions of the MCOC Act have been applied against the accused. Even if it is held that there is no commonality of the offence by this accused with the gang leader, considering the serious nature of the crime and the vulnerability of the informant and other prosecution witnesses, the accused cannot be enlarged on bail. This is not a fit case to exercise discretion in favour of the accused. The apprehension put forth by the learned APP, in my opinion, is well founded. As such, the Application deserves to be rejected. No case has been made out to enlarge the Accused on bail. Hence, Criminal Bail Application is rejected.

[G. A. SANAP, J.]