

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1949 OF 2022

Abhishek @ Chokhya Tukaram Yelwande ... Applicant

V/s.

State of Maharashtra ... Respondent

.....
Ms. Shubhangi Parulekar, Advocate for Applicant.

Ms. Pallavi N. Dabholkar, APP for Respondent-State.
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CORAM : G. A. SANAP, J.

DATE : 31st OCTOBER, 2023

P C:-

1. Heard.

2. The applicant who is accused No.1 in C.R.No. 191 of 2021 registered with Warje Malwadi Police Station, Pune for the offence punishable under Sections 307, 387, 120(B) read with 34 of Indian Penal Code, 1860 (for short "IPC") and Section 7 of Criminal law Amendment Act, Section 3(25) of Arms Act, Section 37(1)(3) read with 135 of Maharashtra Police Act and 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organised Crimes Act (for short "MCOCA Act").

3. Learned Advocate for the Applicant submitted that stringent provisions of MCOC Act has been invoked without any evidence against the accused No.1. Learned Advocate took me through the report lodged by the informant and his supplementary statement and submitted that his report and statement silent about the presence of the accused on the spot. Learned Advocate submitted that save and except the crime registered against him for the offences under the Arms Act, no major crime was registered against him. Learned Advocate submitted that as on date, there is no evidence in the charge-sheet to believe the case of the prosecution for the purpose of deciding the bail application, that the accused was part of a crime syndicate of which Nakul Khade is the gang leader. Learned Advocate submitted that from the CCTV footage recovered from the spot, the informant has identified only Nakul Khade and Chetan Pawar. Learned Advocate submitted that there was no recovery of any weapon or article at the instance of the accused. Learned Advocate, therefore, submitted that for the purpose of investigation, further detention of the accused is not necessary. It is submitted that in the teeth of the material on record at this stage against the accused No.1, his further incarceration is not warranted. Learned Advocate submitted that accused is ready to abide by the conditions that may be imposed by the Court.

4. Learned APP submitted that there are statements of the confidential witnesses to pinpoint the role played by the accused No.1. Learned APP in all fairness conceded that in this case, Test Identification Parade was not conducted. It is also undisputed at the behest of the prosecution that CDR was recovered to indicate the communication between the accused No.1 and the gang leader prior to the commission of the crime. Learned APP submitted that if the accused is released on bail in such a serious crime, he would definitely tamper with the prosecution evidence and pressurise the prosecution witnesses.

5. It is the case of the prosecution that on 05.06.2021 at about 9:00 a.m., the informant was giving instructions to his employees and engineers in front of his office and at that time two unknown persons came on a red colour motorcycle from service road. The pillion rider was holding a silver colour pistol. It is further case of prosecution that the pillion rider went towards the informant and pointed the pistol at his head. The informant by displaying due diligence tried to save himself and ran away from the spot but the person carrying the pistol fired bullets at him. He sustained injuries. However, despite this deadly attack on his life he fortunately survived.

6. It is seen on perusal of the complaint that his employees and the office staff was present near the spot. It appears on perusal of the FIR that two persons came on motorcycle and the pillion rider was carrying the pistol. The question is whether the accused No.1 was one of those two persons who had assaulted the informant.

7. The supplementary statement of the informant recorded on 11.06.2021 clearly indicate that after seeing the CCTV footage he identified only Nakul Khade and Chetan Pawar. He has stated in his statement that later on he came to know that accused No.1 and Umesh Chikne being his assailants were arrested in this crime.

8. It is seen that the remaining accused have criminal antecedents. As far as accused No.1 is concerned, two cases are pending against him. One is Crime No. 335 of 2014 i.e. under Sections 143, 147, 149, 427, 504 of IPC and another Crime No. 104 of 2016 i.e. under Sections 4(25) of Arms Act and Section 37(1) read with 135 of Mumbai Police Act. The prosecution has relied upon these two cases to justify its contention that on account of the past criminal antecedents of the accused, he cannot be released on bail. It is to be noted that while deciding the bail application, the merits of the matter cannot be gone into. The evidence placed on record cannot be subjected to scrutiny so as to opine about the credibility of the said evidence. The Court has to consider the

nature of the crime, the role attributed to the concerned accused and the evidence compiled in the charge-sheet against the accused. Considering all these facts, *prima facie* the Court has to decide the bail application.

9. In this case, in my view, after considering the above factors and the material available on record, bail cannot be denied to this accused simply because of the fact that the stringent provisions of the MCOC Act have been invoked. In the facts and circumstances, I conclude that further incarceration of the accused in this case is not warranted. The apprehension put forth by the learned APP can be redressed by imposing appropriate conditions, keeping in mind the nature of the crime.

10. Accordingly, I proceed to pass the following Order:

ORDER

- (i) Applicant- Abhishek @ Chokhya Tukaram Yelwande be enlarged on bail in C.R.No. 191 of 2021 registered with Warje Malwadi Police Station, Pune, on executing P.R.Bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) with solvent surety in the like amount.
- (ii) Applicant shall not tamper with the prosecution evidence.

- (iii) Applicant shall not contact prosecution witnesses or any person directly or indirectly.
- (iv) Applicant shall not enter the entire Pune District, till the completion of the trial except for the purpose of attending the case at Special Court, on the given date and that too by reporting his appearance at Warje Malwadi Police Station, Pune, in advance.

11. The Bail Application stands disposed of.

SONALI
SATISH
KILAJE

Digitally signed
by SONALI
SATISH KILAJE
Date:
2023.11.03
14:14:47 +0530

(G. A. SANAP, J.)