

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

**CRIMINAL BAIL APPLICATION NO. 3652 OF 2022**

Anil Popat Sonawane

....Applicant

**Versus**

The State of Maharashtra & Anr.

....Respondents

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Mr. Shirish Gupte Senior Advocate a/w Mr. Sandeep Salunkhe i/b  
Ms. Pratibha Pawar, Mr. Udaysinh Deshmukh and Mr. Narayan  
Rokade for the Applicant.

Ms. Pallavi N. Dabholkar, APP, for the Respondent No.1-State.

Mr. Sudeep Pasbola i/b Mr. Ayush Pasbola for the Respondent No.2.

Mr. Vishnu Deshmukh – PSI Kalbhor Police Station, Loni. District –  
Pune present.

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**CORAM : G. A. SANAP, J.**

**DATE : 9<sup>th</sup> NOVEMBER, 2023.**

**P.C. :**

1. The Applicant/Accused No.8 has made this Application for bail in C. R. No. 571 of 2021, registered with Kalbhor Police Station Loni, District - Pune for the offences punishable under Sections 302, 307, 201, 120-B read with Section 34 of the Indian Penal Code, 1860 (for short “IPC”) and Sections 3(25), 5(27) of the Arms Act, 1959

and Sections 37(1)(3) & 135 of the Maharashtra Police Act, 1951 and Sections 3 & 7 of the Criminal Law Amendment Act and Sections 3(1)(i), 3(2) & 3(4) of the Maharashtra Control of Organized Crime Act, 1999.

2. The learned senior Advocate Mr. Shirish Gupte submitted that no specific role has been attributed to Accused No.8 either in the actual commission of crime or in the abatement of the conspiracy. The learned senior Advocate submitted that the complicity in the crime is sought to be established on the basis of CDR and statements of two confidential witnesses. The learned senior Advocate submitted that the CDR of his mobile phone dated 23<sup>rd</sup> September, 2021 would not assume significance because on the given date he was present in his village where Accused Nos. 4 and 7 also reside. The learned senior Advocate submitted that there is no CDR to establish presence of the Accused near the Missal Stall on 19<sup>th</sup> October, 2020. Learned senior Advocate submitted that, he has been arraigned as an Accused only on the basis of his enmity with the deceased. The learned senior Advocate submitted that he was an Accused in earlier crime registered against him with the other Accused under Section 307 of the IPC.

The learned senior Advocate submitted that in view of the role attributed to the Accused, in the evidence compiled in the charge-sheet against him the bar under Section 21(4) of Maharashtra Control of Organized Crime Act, 1999 would not get attracted in his case. The learned senior Advocate submitted that he was not a member of crime syndicate of which the Accused No.3 is gang leader with the other Accused. The learned senior Advocate submitted that at this stage, the involvement of the Accused in commission of the offences under the MCOC Act is doubtful and, therefore he is entitled to get bail.

3. The learned APP submitted that there is motive for commission of crime. The learned APP pointed out that the Accused No.8 is cousin brother of Accused No.4. The learned APP further pointed out that the deceased Santosh Jagtap was facing prosecution for committing murder of Ramesh and Ganesh Sonawane, who were the brothers of the Accused No.4. The learned APP submitted that Accused person had decided to take the revenge and eliminate Santosh Jagtap. The learned APP pointed out that earlier also an attempt was made on the life of Santosh Jagtap but, at that time, he could save himself. The learned APP submitted that there was rivalry

between the gang of Santosh Jagtap and Accused Nos.4 and 7 on account of lifting of sand from river bed. They were each others competitors in the said business. It is pointed out that there was a mad race between them to establish their supremacy in the locality. The learned APP submitted that Applicant/Accused No.8 being abettor is not entitled to get the bail. The learned Advocate appearing for the intervenor has adopted the submission advanced by the learned APP.

4. In order to appreciate the rival submissions, I have perused record and proceedings. It is seen on perusal of the record that the Accused No.8 has a criminal antecedents. However, the fact remains that in the past, he was not Accused in a case registered under the MCOC Act. It is undisputed that the gang of Santosh Jagtap and Accused Nos.4 and 8 were arch rivals. Santosh Jagtap had killed two brothers of the Accused Nos.4 and 8. It is therefore, apparent that they were bound to have a grudge against Santosh Jagtap. It is seen that Santosh Jagtap fearing his life had availed the services of two body guards for his protection. It is seen that in the assault on Santosh Jagtap one body guard was also killed. It is also seen that one

assailant i.e. Accused No. 1 who was also killed in the firing. It is the case of the prosecution that the Accused Nos.1, 2 and 3 were involved in the actual fact. The Accused No.3 is a gang leader of crime syndicate. It is case of prosecution that Sonawane brothers' hired the services of this gang to eliminate Santosh Jagtap.

5. In this case except the CDR of 23<sup>rd</sup> September, 2021 and the statements of two confidential witnesses, there is no other evidence against the Accused No.8 with regard to his actual contacts or dealing with the gang leader. As far as the CDR of 23<sup>rd</sup> September, 2021 is concerned, in my view, it may not be of great significance because the CDR indicate that the applicant was present in his village on the given date. As far as the statement of the confidential witnesses are concerned, in my view, the same can be considered, *Prima facie*. However, those statements cannot be tested on merits. Even, if the CDR and the statements of the confidential witnesses are considered at their face value, it would show that the same by itself may not be sufficient to deny bail to the Accused No.8. It is true that the Accused No.8 has a criminal antecedents. As far as, the criminal antecedents are concerned the same are required to be taken into

consideration while deciding the subsequent bail application. However, if the evidence in given case to the mind of the Court is not *prima facie* sufficient establish, the involvement of the Accused in the crime in question, then solely on the basis of the criminal antecedents, the bail cannot be denied. It is seen that, as far as the Accused No.8 is concerned, the offences committed by him in past have no commonality with the offences registered against the members of the crime syndicate.

6. In my view, therefore, in this case the rigor of Section 21(4) would not apply as far as the Accused No. 8 is concerned. In the teeth of the evidence compiled in the charge-sheet in my opinion the Accused deserves to be released on bail. The apprehension put forth by the learned APP can be appropriately addressed by imposing suitable conditions. It is made clear that the observations made in this order are for limited purpose of deciding bail application. The Trial Court shall not get influenced by the same while deciding the case on merits. Hence, I pass following order.

**ORDER**

- a) The criminal application is allowed.
- b) The Applicant – Anil Popat Sonawane in connection with C. R. No. 571 of 2021 registered with Kalbhor Police Station Loni, District – Pune, be released on bail on furnishing P.R. bond to the extend of Rs.50,000/- with one or more sureties in the like amount.
- c) The Applicant shall not in any manner tamper with the prosecution evidence directly or indirectly.
- d) The Applicant shall not in any manner pressurize or threaten the prosecution witnesses directly or indirectly.
- e) The Applicant shall not enter Daund Talukha till the conclusion of the trial.
- f) The Applicant shall provide his address and his mobile number to the Kalbhor Police Station, Loni, District - Pune.

**(G. A. SANAP, J.)**