



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

915 BAIL APPLICATION NO. 2197 OF 2023

AKSHAY SANJAY HAKE

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Desale Nilesh N.

APP for Respondent/State : Mr.G.O. Wattamwar

...

WITH

BAIL APPLICATION NO. 243 OF 2024

DNYANESHWAR @ KENYA HIMMAT KADHARE

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Desale Nilesh N.

APP for Respondent/State : Mr.G.O. Wattamwar

WITH

BAIL APPLICATION NO. 276 OF 2024

AAKASH NANA KOLI

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Deshpande Chaitanya Chandrakant

APP for Respondent/State : Mr.G.O. Wattamwar

...

CORAM : S. G. MEHARE, J.

DATE : 18th October, 2024.

P.C.:

1. Heard the learned counsel for the applicants, the learned APP for the respondent-State and the learned counsel for the first informant.

2. The applicants seek bail in crime no.156 of 2020 registered with

Mohadi Nagar police station, Dist. Dhule for the offences punishable under sections 302, 120-B, 201, 143, 147, 148, 149, 504, 506 read with 34 of the Indian Penal Code, sections 3/25, 4/25 and 27 of the Arms Act and sections 3(1)(i), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act (for short, "MCOC Act").

3. Admittedly, the applicants have been arrested in 2020. Since then they are languishing in jail. The learned counsel for the applicants have argued the matter on merit. However, without raising specific ground for indefinite incarceration, they were pressing hard to grant them bail in view of a recent judgment of the Hon'ble Supreme Court in the case of ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another, Criminal Appeal No.2787 of 2024 (Arising out of SLP (Cri) No.3809 of 2004), dated July 3, 2024***. They would submit that till date the trial Court is not able to even proceed to frame charge. Many applications are pending. They are ready to abide the conditions imposed while enlarging them on bail.

4. The learned APP for the respondent-State and the learned counsel for the victim submit that it is just taking the disadvantage of tactics played to delay the trial. Since there are large number of accused, they are filing different applications at different times. These were deliberate acts of not supporting the prosecution to conclude the trial. Since the accused have the rights to file various applications, the Court cannot refuse it, but this is purely a misuse of the process of law.

Such applications should have been submitted at the earliest. The professionals are playing with the law. They without raising any specific ground for long incarceration just asked the bail on that ground. They should have raise such ground in the applications. However, none of the lawyer took pains to add this ground to the applications. They have submitted that since the ground was not raised, they could not be able to explain properly the reasons for alleged delay and point out the tactics played by the applicants to protract the trial. Hence, they prayed not to consider this ground.

5. So far as the merit of the matters is concerned, they have come before the Court for the first time. The applicant Dnyaneshwar @ Kenya is not named in the FIR. There are general allegations against the applicants. The investigation against him and the custodial interrogation is over. The MCOC Act could not be applied as there were no criminal antecedents to his discredit. There was no syndicate crime. There are no specific allegations levelled against him. He is the sole bread earner of his family.

6. Lengthy arguments of the learned counsel for the applicants would show that they are harping upon the nature of the incident and large number of persons attacking to the deceased. The incident has been captured in CCTV footage. However, a few persons were captured in the CCTV footage for going and coming back. Nothing was recovered from the applicants. The weapons have been recovered

from the spot of the incident. Some of the weapons were recovered from one Badshah Dargah Hill, but not at the instance of any applicants. The clothes were recovered. The vehicle has been recovered from accused Akash. It was not the weapon used for committing the murder. It has also been argued that the eyewitnesses are the family members and planted witnesses. Their statements were recorded belatedly. The statement of eyewitness Bansi R. Gosavi was also not consistent and corroborated by any other witnesses.

7. It was further argued that the CCTV footage from the Toll Naka does not establish the involvement of the applicants because it was captured for a very short time. If the timing from the said CCTV footage is considered, it is highly improbable to accused to complete the crime and go back. The statement of Ravindra Chavan was also recorded belatedly. The witness Shubham Bhamre allegedly present on the spot of incident and witnessed the incident, he did not disclose the incident immediately. His statement does not inspire the confidence. In fact, he ran away from the place of the incident, which is near the hotel. There is no evidence that the applicants took their bikes from the Dhaba of the deceased after the alleged incident. They prayed that considering the imbalanced evidence against them, they may be released on bail.

8. The learned APP vehemently argued that the deceased had 53 injuries. It was an organized crime. Only the nexus is sufficient to apply MCOC Act. The FIR was immediately registered. There was no

inordinate delay in recording the statements of the witnesses. FIR mentions a specific role attributed to each of the accused. Negligible variance in the statements of the witnesses would not make the prosecution case doubtful. It was brutal murder. Hence, the mental condition of the witnesses are to be considered. In the CCTV footage, the accused were seen carrying the weapons. Applicant-Akshay Hake was driving the bike. Ajay Koli was pillion, he was holding a sword. Rahul was second pillion. He was holding the hockey stick. Atul was holding the sword. Applicant – Dnyaneshwar was driving the bike. First pillion Om Shendge was holding sword and second pillion Ganesh was also holding sword. All the accused were together while passing through the Toll Naka. In the ordinary course of life, no person would carry a deadly weapon with him. Their intention was clear to eliminate the deceased. The deceased tried to save his life but, all the accused chased him and assaulted him with deadly weapons. So far as the delay is concerned, several applications were filed by different applicants one after another to protract the trial. In fact, the matter was ready for framing the charges. The learned APP would also argue that more than one charge-sheet is not required to be filed against the accused to apply the MCOC Act. To support his arguments, he relied on ***Zakir Abdul Mirajkar Vs. State of Maharashtra and others {2020 DGLS (SC) 1081}***.

9. The learned counsel Mr.Raje for the victim would submit that there was deliberate delay on the part of the accused to proceed with the trial. The applicants were playing tactics and protracting the trial. The material collected against the applicants is cogent and reliable. The offence is serious. It was a determined act to eliminate the deceased. He would submit that it was an organized crime. Therefore, the MCOC Act has been correctly applied. Therefore, the applicants do not deserve bail.

10. In reply, the learned counsel Mr.Deshpande for the applicants argued that still many applications are pending for orders and hearing.

11. The first ground raised is delay in trial cannot be considered as there were no grounds as such in the bail applications. It was an eleventh hour ground. Therefore, there is substance in the arguments of the learned APP that unless the details have been supplied, it was difficult for the prosecution to explain how the delay has been caused and who is responsible for delay. Since many applications are still pending show the tendency of the accused, to protract the trial. They appear not diligent in filing such applications at the earliest. The Hon'ble Supreme Court in the case of ***State of Bihar and another Vs. Amit Kumar @ Bachcha Rai (2017) 13 SCC 751*** has held that if the offence is serious and committed with predetermined mind, long incarceration of the accused is no ground to grant bail. Mere delay is no ground to grant bail. The conduct of the parties should also be

seen. Whether the tactics as argued by the learned APP are played and the criminals of the serious crimes are responsible to protract the trial, long incarceration may be a ground to grant bail mechanically.

12. As far as merit is concerned, the prosecution case in brief was that the incident happened when the deceased was in his hotel. Around 24 accused went to his hotel on bikes. The CCTV footage reveal that few of the accused were holding the deadly weapons. The prosecution has evidence that all the accused came on bikes and arranged the deadly weapons. They deliberately covered their faces with handkerchief. All the accused left at a time. The Investigating Officer has given the details of the accused holding the deadly weapons and travelling together on the bikes. The first informant was the eyewitness to the incident. He had immediately lodged the report. They started abusing the deceased. The deceased and others also threw chairs on their person. One of the accused opened fire, so the first informant and deceased started running. All the accused chased the deceased and killed him with deadly weapons near nullah. Eyewitness has also explained the assault on the person of the deceased. Eyewitness has specifically stated that immediately after the incident all the accused fled away on the motorcycles. Prima facie, the evidence reveal that the applicants were gathered together with a motive to eliminate the deceased and travelled on the bikes armed with deadly weapons. The first informant and the deceased were

knowing the applicants and other co-accused. The accused were large in number. Therefore, in such a situation, it could not be expected from the first informant to specify the specific role of each applicant. It is to be assessed what was their common object. Their pre-incident conduct and post-incident conduct is sufficient to believe that they had a common object. They came all together with the deadly weapon and mercilessly killed the deceased causing him around 56 injuries and immediately ran away. If some discrepancies are there, those would not be disbelieved at this juncture, because it was an act committed by a group of people with common object. Reading the papers it shows that it was a predetermined act and committed with a terror. The evidence collected against all accused in this crime shows the connection with the crime. All accused were aggressive and of determined mind to eliminate the deceased. Their acts apparently created a terror in the locality. Therefore, some of the discrepancies which may be explained during the trial cannot be considered at this juncture for granting them bail.

13. It may be observed in short that the acts of the accused were with a common object. It was brutal murder of the deceased with deadly weapons without showing any mercy. So, in such a case, granting bail to such hardened criminals would be dangerous to the society.

14. Both the learned counsel for the applicants relied upon the case of ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another, Criminal Appeal No.2787 of 2024 (Arising out of SLP (Cri) No.3809 of 2004), dated July 3, 2024.*** However, that can not be considered in these cases in view of the above observations. Hence, the bail applications stand dismissed.

15. Criminal Application no. 4359 of 2024 stands disposed of.

[S. G. MEHARE, J.]

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