



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

26 BAIL APPLICATION NO. 2219 OF 2023

Bharat S/o Vitthal Edke.

... Applicant

Versus

The State of Maharashtra.

... Respondent

...

Mr. Rahul R. Karpe, Advocate for Applicant.

Mrs. Pratibha J. Bharad, APP for Respondent/State.

...

CORAM : **SANJAY A. DESHMUKH, J.**

DATE : 22nd January, 2024.

P.C.:

1 Heard.

2 This is an application, under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in connection with Crime No.130 of 2014, registered with Jamkhed Police Station, District Ahmednagar, for the offences punishable under Sections 396, 341, 323, 504, 506(2) of the Indian Penal Code, Sections 3/25 and 4/25 of the Arms Act and Sections 3(1)(i) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short "MCOC Act").

3 It is alleged that the applicant and other accused committed murder of Shankar Thanekar. It is alleged that by informant Malchand Bapusaheb Naik, resident of Peth Vadaj, Tahsil Kandhar, District Nanded that he was leader of Shivsena Party and Chief of Taluka Kandhar and Shankar Mahadeorao Thanekar, resident of Jintur, Tahsil Mukhed was President of Shivsena Party for Mukhed, Manoj @ Ramrao Jivanrao Gond was Vice-President of Shivsena Party, Mukhed, Shivaji Shankarrao Gedewar was Chief of Shivsena Party Mukhed city and Shankar Narayanrao Lute was Kisan-Sena District Chief, Nanded. The elections of Legislative Assembly were forthcoming and the names of the contesting candidates for Mukhed Constituency were to be finalized. On 31st August, 2014 at about 11:00 pm, the informant alongwith Shankar Thanekar, Manoj Gond, Shivaji Gedewar, Shankar Lute proceeded towards Mumbai by Innova car, which was owned by Janardhan Shettiwad and driven by Avinash Bailke. The discussion took place at Mumbai about prospective candidate of the party for the forthcoming elections. On 2nd September, 2014, they all started return journey through Mumbai – Pune – Ahmednagar. At about 11:00 pm, they had dinner at Hotel Sandip, Kedgaon Shivar at Pune-Nagar highway. They all proceeded towards Ashti-Jamkhed road and had tea near the Toll-Naka of Pandhari village. That time, Shankar Thanekar took the steering of said car and started to drive it, because the driver Avinash Bailke was

feeling drowsiness. The informant sat near to the seat of driver. Middle seat was taken by driver Avinash Bailke and Shankar Lute. Backside seat took by Manoj Gond and Shivaji Gedewar. On 3rd September, 2014 at about 00:45 hours, when they reached near Jamkhed, one white colour four-wheeler without number plate and without logo of the company, looking like *Zylo* car, overtook them and parked their vehicle in front of the vehicle of the informant. Then 7 to 8 unknown persons alighted from the said car and started demanding cash and valuables. They pulled out the informant, Shankar Thanekar, Avinash Bailke and Shankar Lute and started assaulting them by fists and kick blows and threatened on the point of revolver. One amongst them, assaulted on the right-side of chest of Shankar Thanekar with the help of weapon like *Gupti* and killed him on the spot. They took custody of Innova car and fled away towards Jamkhed side. That time, they took away two tolas golden ring, ten grams silver rings, cash amount of Rs.9,500/-, mobile handset of Carbon company. Report was lodged on the same day at about 03:45 hours at Jamkhed Police Station. The other co-accused were arrested, however, this applicant was not traced out and therefore, trial proceeded against the five accused. The MCOC Act was invoked against the applicant later on and after that, charge-sheet was filed in the Special Court, (MCOC Act), Nashik. Special (MCOCA) Case No.02 of 2015 proceeded further and decided on 31st October, 2018. Those five accused were

acquitted and as per the directions of the learned Special Judge, (MCOC Act), Nashik, in the operative part of the judgment, in clause (5), directions were given to the investigating officer to file separate charge-sheet against absconding accused i.e. this applicant. The applicant is arrested on 17th April, 2022 and since then he is languishing in the jail.

4 The learned counsel for applicant submitted that the procedure under Section 299 of the Code of Criminal Procedure was not followed by the investigating officer prior to submitting the charge-sheet. No any attempt was made to arrest the applicant. The applicant is resident of Mira Bhaindar East, District Thane. He has roots in the society. He will not flee away from trial. He is labourer. He has no criminal antecedents. There is no *prima-facie* evidence against him. The applicant is ready to abide all the conditions. It is lastly prayed to allow the application.

5 The learned APP for the State strongly opposed the application and submitted that the applicant is involved in serious crime and he is absconding since last eight years. Though the trial is concluded and other accused are acquitted, it cannot be inferred that the applicant is also innocent and likely to be acquitted. He is arrested in other three crimes. The list of these three crimes shows that the

applicant was involved in similar type of crimes registered under Sections 392, 395 396 of the Indian Penal Code alongwith the Arms Act. The three cases bearing SC No.17 of 2015, SC No.385 of 2014 and SC No.371 of 2014, are pending in the Sessions Court, Ahmednagar. The learned APP also pointed out sub-section (5) of the Section 21 of the MCOC Act, which provides that the Court while granting bail has to consider whether the accused was released on bail or not in other crimes. It is lastly prayed to reject the application.

6 Perused the charge-sheet, particularly, report as well as the judgment of the learned Special Judge, (MCOC Act), Nashik. All the accused are acquitted, however, that is no ground to release this applicant on bail. If the criminal antecedents of this applicant are considered, he is prosecuted in other three cases. Now the special case is pending. If the statements of witnesses are considered, *prima-facie*, those do not disclose the description of this applicant. The test identification parade of the applicant was also not conducted. No any incriminating article is seized at the instance of this applicant. Considering all these aspects, though there are three crimes registered against the applicant and mandate of sub-section (5) of Section 21 of the MCOC Act, the application deserves to be allowed on certain stringent conditions to secure the presence of this applicant for the trial. Hence, the following order:-

ORDER

- I. The application is allowed.
- II. The applicant in connection with Crime No.130 of 2014, registered with Jamkhed Police Station, District Ahmednagar, for the offences punishable under Sections 396, 341, 323, 504, 506(2) of the Indian Penal Code, Sections 3/25 and 4/25 of the Arms Act and Sections 3(1)(i) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999, be released on bail on furnishing two personal bonds of Rs.1,00,000/- (Rupees One Lakh only) with sureties of the like amount on following conditions:-
 - a) The applicant shall not pressurize the prosecution witnesses.
 - b) The applicant shall not tamper with the prosecution evidence, in any manner.
 - c) The applicant shall attend each and every case before the Special Court.
 - d) If the applicant remains absent without any justification for continuous three dates, the Special Court would be at liberty to cancel the bail without reference to this Court and proceed further with the trial.
 - e) The applicant shall not leave the Maharashtra State without prior permission of the Special Court.

[SANJAY A. DESHMUKH, J.]