

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE CIVIL JURISDICTION
BAIL APPLICATION NO.186 OF 2023

Suraj Bapu Sagare .. Applicant
Versus
The State of Maharashtra .. Respondent
...

Mr. Aditya Sharma a/w Ms. Priya Maurya for the Applicant.
Ms. Mahalaxmi Ganapathy, APP for State-Respondent.

CORAM: BHARATI DANGRE, J.
DATED : 30th APRIL, 2024

P.C:-

1 The applicant seek his release on bail, on being charge-sheeted in C.R. No.61 of 2020, which had invoked the offences punishable under Sections 307, 387, 506 (2) 120(b) r/w Section 34 of IPC, Sections 3, 25 and 27 of the Arms Act, Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crimes Act, 1999, (for short, “**the MCOCA**”) registered with Kurar Police Station. He is apprehended on 4/02/2020 and upon his application being rejected by the City Civil and Sessions Court on 4/01/2023, he has filed the present application seeking his release on bail.

2 Heard learned counsel Mr. Aditya Sharma, who apart

from pressing the ground of his long incarceration, would submit that the trial would consume considerable time, since 86 witnesses are proposed to be examined by the prosecution.

The learned counsel would submit that the applicant is entitled to parity, since co-accused Mangesh Jaishankar Pandey and Jiten Garasiya @ Jitiya were released on bail by this Court on 7/10/2022, and recently on 18/04/2024, three of the co-accused, Nikhil Chandrakant Rokade, Vivekanand Sudhir Pise @ Vicky and Rahul Pandurang Mandri @ Rahul Mantri, are also released on bail.

The submission of the learned counsel is the role attributed to the present applicant, and his connection with the subject C.R. is obscure and according to him, the invocation of the provisions of MCOCA is a malafide action, which would be exposed at the time of trial, as the necessary ingredients of MCOCA are not made out in the present case and therefore, the further incarceration of the applicant is totally unwarranted.

The learned APP, Ms. Ganapathy, has vehemently opposed the application, though she do not deny that this Court on 18/04/2024, has released three co-accused on bail in the same C.R. on recording that the necessary ingredients of the offence under MCOCA, were not made out.

3 It is the case of the prosecution that, under the leadership of Uday Pathak, the accused persons have formed an organised crime syndicate and though he continued to be

incarcerated, another active member of the crime syndicate Babu Chintale was running the syndicate in jurisdiction of Kurar Police Station. Uday Pathak along with his associates are accused of committing a brutal murder in the year 2011, when four persons were killed and this created a terror across the people, residing in the jurisdiction of Kurar Police Station.

It is alleged that in the year 2015, on instructions of Uday Pathak the member of organised crime syndicate indulged into an act of firing for the purpose of extortion, in which complainant Shri Tarkeshwar Singh sustained injury, and C.R. No.353 of 2015 was registered, which invoked Sections 307, 385 r/w 3, 25 of the Arms Act and Uday Pathak as well as other members of the syndicate were arrested and charge-sheeted.

4 Babu Chintale a close and active associate of Uday Pathak, who was also arrested in the year 2011, along with Uday Pathak was released from jail in the year 2014 and it is alleged that he started his unlawful activity on behalf of Uday Pathak gang and he committed an offence of robbery along with his associates resulting into registration of C.R. No.226 of 2015 under Sections 394, 341, 323, 504, 506(2), 34 of IPC r/w 4, 25 of the Arms Act with Kurar Police Station. In continuation of this unlawful activity, he committed another offence of robbery for the purpose of economic gain and one more C.R. No.91 of 2019 is registered, which has invoked Section 394, 34 of IPC. Even this case is chargesheeted and cognizance has been taken.

It is the case of the prosecution, that all the offences registered against gang leader and crime syndicate are cognizable offences, which invite punishment of 3 years and more and since they have been committed within the presiding period of 10 years and the Competent Court has taken cognizance of all the three offences committed by using force and for the purpose of pecuniary gain, the existence of the organised crime syndicate is clearly established.

5 As per the prosecution, in continuation of the unlawful activity by the organised crime syndicate, from 1/02/2020, co-accused Santosh Sharma on the instructions of gang leader Uday Pathak and with the active assistance of Babu Chintale and other accused persons, indulged in firing, with the purpose of extortion and this resulted in a complaint being filed by a worker in the shop, who noticed one person wearing blue colour full sleeved shirt and blue colour jeans with his face covered. This person fired one shot from his handgun, resulting into shattering of glass of the wooden cupboard by his side, and some pieces of the glass also hit him.

Along with the firing, hand written chits in an envelope were thrown at the spot, which was a demand to pay the extortion amount and the chit contained the name of Uday Pathak gang and the extortion amount.

This resulted in registration of subject C.R. No.61 of 2020 invoking Sections 307, 387, 506(2), 34, 120(b) of IPC and

the relevant provisions of the Maharashtra Police Act.

6 When co-accused Santosh Sharma was arrested, he gave a confessional statement under Section 18 of the MCOCA, admitting that he fired on instructions of Uday Pathak and had thrown the envelopes at two places, which were handed over to him by Uday Pathak.

7 The present applicant is arraigned as accused no.4, and the role attributed to him is of being associated with Uday Pathak, as the statement of one of the witness compiled in the chargesheet reveal that, he had accompanied Santosh to visit Uday Bhai in the Court in Mumbai and he had met Vikas @ Mangesh Pande, Jitu @ Jitlya Garsiya , Pravin @ Pary Prakash Baviskar, Babu Chintale and Dharma @ Ganya Ghadge and in one of such vists he was introduced to Nikhil Rokade and Suraj Sagare i.e. the present applicant. Nikhil, as per his say was also with Uday in Jail and he used to meet Uday Bhai, whenever he is taken out of the Jail for the Court visits.

As per this witness, somewhere in November, 2019 when he along with other co-accused had visited Sessions Court to meet one Vicky Pise, Santosh, Nikhil and Suraj (the applicant) were also present and at that time Uday Bhai is alleged to have told Santosh that people have started forgetting him and therefore, he must arrange for a big bang and collect extortion money from the traders in Kurar and he gave instructions to be ready for the event and indicated that the expenses for the same

shall be borne by Babu and Santosh is going to get the weapon.

He refer to an incident of 5/12/2019, when to comply the instructions given by Uday Bhai all the co-accused gathered together and they consumed liquor and it was revealed that as per instructions of Uday Bhai, the extortion amount was to be recovered, by firing on Anand Singh of Anand Medicals and Mr. Rokdiya of Rokdiya traders. It was also indicated to them in the meeting, that this act of firing would create a reign of terror, and the traders would start paying the extortion money. Thereafter, according to him, recce was conducted by Santosh, Nikhil, Suraj, Pravin, Jitu, Babu Chintale and Vikas.

Further in January, 2020, when they had gathered to consume liquor, Santosh showed them the weapon, which was brought by him for accomplishing the task entrusted to him by Uday Bhai and by way of trial the weapon was fired in the parking of Babu Chintale. He was also privy to an act which was entrusted to Santosh an act of eliminating one Ahmed, who was released from jail and since he was scared on hearing the plan, he disassociated himself with the entire gang.

Thereafter, the witness came to know about the incident of firing, which had occurred on 1/02/2020.

8 The confessional statement of Santosh also make a reference to the present applicant, but all the material is surfacing through the statement of the co-accused and as far as positive evidence is concerned, the learned APP would invite my

attention to the CDR of the present applicant and she would submit that he was in touch with other accused persons.

Merely being in contact with one another, shall not be sufficient to establish the involvement of the present applicant, in the commission of the offence and particularly a serious one, where MCOCA has been invoked.

The location of his mobile phone is also stated to be in Kurar, which is for the obvious reason that he is resident of Kurar.

9 The applicant stand on a similar footing as Mangesh Jaishankar Pandey and Jiten Garasiya and when I have perused the affidavit, filed by Rajendra Mohite, Asst, Commissioner of Police opposing the application, I have inquired with the learned APP as to whether there is any common accused in any of the C.R. which is registered against gang leader Uday Pathak or Babu Chintale and her answer is in the negative and she state except from the present C.R. i.e. 61 of 2020, there is no commonality of offences qua this applicant ,with the gang leader.

It may be true that 16 chargesheets are filed against the gang leader Uday Pathak before the Competent Court for last 10 years, and 9 chargesheets are filed against Babu Chintale, as far as present applicant is concerned, he is named as an accused in a C.R. registered at Bhoiwada Police Station and except the present offence, he is not found associated with commission of any of the offence along with Uday Pathak and Babu Chintale.

10 Though a bald statement is made that the present applicant is indulging in continuing criminal activity within the provisions of MCOCA either by himself and with the fellow gang members of the organised crime syndicate lead by the gang leader, I do not find any material in the chargesheet to that effect.

 The CDR analysis to show that the applicant was resident of Parel, Mumbai and roaming in Kurar area and also in the Court of Sessions on specific dates that gang leader Uday Pathak was produced is also too far fetched a connection to conclusively establish that the applicant was a member of organised crime syndicate.

 The confession statement of Santosh is the material, which bring about his involvement in the present case. Under the recovery panchnama, a recovery of shirt of the co-accused Santosh Sharma is attributed to him. However, there is no material to establish that it is the same shirt, which was worn by Santosh Sharma while committing the crime.

11 Since the co-accused are released on bail, I see no reason why the applicant should remain incarcerated, during the pendency of the trial. On the investigation being complete, the charge-sheet is filed and his further detention is unnecessary as “jail is the rule and bail is the exception”

 Needless to state that the applicant shall take consequences of his act, on he being tried for the offence under Section 307 along with the offences under the MCOCA.

It is made clear that, the observations made hereinabove, are prima facie in nature and limited to the extent of adjudication of the present application and the learned Judge trying the applicant for the offences, with which he is charged shall not get influenced by the above observations, in any manner.

In the wake of the aforesaid, I deem it appropriate to release him on bail.

: ORDER :

- (a) Application is allowed.
- (b) Applicant Suraj Bapu Sagare, shall be released on bail in connection with C.R.No.61 of 2020 registered with Kurar Police Station, on furnishing P.R. Bond to the extent of Rs.25,000/- each, with one or two sureties in the like amount.
- (c) The Applicant shall mark his attendance before the concerned police station on first Monday of every trimester between 3.00 p.m. to 5.00 p.m.
- (d) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

- (e) On being released on bail, the Applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.
- (f) The Applicant shall attend the trial on regular basis.

(SMT. BHARATI DANGRE, J.)