

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

CRIMINAL BAIL APPLICATION NO.853 OF 2024

Amar Ashok Sanas	 Applicant
Versus	
The State of Maharashtra	 Respondent

**....
WITH
INTERIM APPLICATION NO.1367 OF 2024
IN
CRIMINAL BAIL APPLICATION NO.853 OF 2024**

Mr. Aniket Nikam, Advocate i/b. Amit Icham for the
Applicant.

Smt. M.H. Mhatre, APP for the Respondent-State.

Smt. Aruna Pai, Advocate for the Intervenor.

CORAM : SARANG V. KOTWAL, J.

DATE : 17th APRIL, 2024

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R. No.267/2015 dated 24.12.2015 registered at Paud police station, District-Pune. Initially the FIR was registered under Sections 302, 120-B of IPC and

3(25) and 4(27) of the Arms Act. Subsequently the provisions of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as the 'MCOC Act') were invoked and the approval was granted for the investigation under Section 3(1)(i)(ii), 3(4) of the MCOC Act. The investigation in this case is over. The charge-sheet is already filed. The Applicant was arrested on 2.1.2016 and since then he is in custody. This is the first time that the Applicant has approached this Court for his release on bail.

2. Heard Mr. Aniket Nikam, learned counsel for the Applicant, Smt. M.H. Mhatre, learned APP for the Respondent-State and Smt. Aruna Pai, learned counsel for the Intervenor.

3. The prosecution case is that the gang-leader Tushar @ Appa Gogavale had formed a gang for gaining pecuniary benefits. One Vijay Mirge was seen as obstruction in their objective. Vijay Mirge had forced one of the accused Mayur Sanas to withdraw from the Grampanchayat elections in the year 2013. Therefore, the

gang leader Tushar along with other members of the gang including the present Applicant hatched a conspiracy to commit Vijay Mirge's murder. For that purpose they brought two country-made revolvers, six live cartridges, sickles and big knives. On 24.12.2015, the Applicant called Vijay for a meeting near Paranjape Scheme and then assaulted him with sickle. The Applicant committed his murder. The FIR is lodged by Vijay's brother Sachin against unknown persons. The statements of the eye witnesses Bangar and Mangesh Mirge were recorded on 24.12.2015. They named the present Applicant as the assailant. The Applicant was arrested on 2.1.2016 and since then he is in custody. During investigation, prior approval under Section 23(1)(a) of the MCOC Act was granted on 16.3.2016. It was mentioned that there were three previous offences against the gang leader Tushar Gogavale. Out of which cognizance was taken for two offences. The approval was granted against seven accused including the present Applicant who had no other criminal antecedents. The

investigation was carried out under the provisions of MCOC Act and the charge-sheet was filed.

4. Learned counsel for the Applicant made the following submissions :

- i. That the Applicant is in the custody since 2.1.2016 i.e. more than eight years and three months. Therefore, on this ground alone the Applicant deserves to be released on bail. He referred to the order passed by the Hon'ble Supreme Court granting bail to the co-accused Sameer Sanas in S.L.P. (Crl.) No.10492/2023 dated 6.10.2023. He submitted that the Hon'ble Supreme Court had observed that said accused Sameer Sanas had undergone incarceration for a period of more than seven and half years and even the charges were not framed. On these observations, he was granted bail.
- ii. Learned counsel submitted that the present Applicant is in custody for a period more than the co-accused

Sameer Sanas and, therefore, he also deserves to be released on bail.

- iii. He submitted that there are circumstances against the present Applicant. There are two eye witnesses, namely, Bangar and Mangesh Mirge. There is recovery at his instance. A blood stained koyta and blood stained clothes were recovered at his instance.
- iv. He submitted that all these circumstances and the evidence of eye witnesses will have to be tested during trial. There is evidence of conspiracy. There are four witnesses who had allegedly heard the conversation between the co-accused. However, the other co-accused who had taken part in that conversation are already released on bail. Therefore, that circumstance may not be taken into consideration against the present Applicant.
- v. There is memorandum of Test Identification Parade conducted to enable the eye witness Bangar to identify the Applicant. However, that may not be

relevant because the said eye witness has named the Applicant in his statement.

vi. He submitted that though at this stage there appears to be some incriminating material against the present Applicant, considering the period undergone by the Applicant as an under-trial prisoner without trial, he deserves to be released on bail.

vii. He submitted that though this Court had expedited the trial vide the order dated 18.6.2021 passed in Criminal Bail Application No.694/2020, after almost four years from that order even the charges are not framed. Even otherwise there is inordinate delay in just the commencement of the trial. The trial will take a very long time to reach its conclusion.

5. Learned APP submitted that on merits there are strong circumstances against the present Applicant and there are statements of eye witnesses. The postmortem notes show that it was a brutal assault. There is recovery at the instance of the present Applicant. The version of the co-

accused Tushar recorded under Section 18 of the MCOC Act also shows the Applicant's involvement.

6. Learned APP added that learned Special PP, who is appearing in this case before the trial Court has already taken steps so that the charges would be framed at the earliest.

7. Learned counsel Mrs. Pai appearing for the first informant opposed this Application. She submitted that while granting bail to the co-accused Sameer Sanas, the Hon'ble Supreme Court has observed that his role is different from the main accused. Learned counsel Mrs. Pai submitted that the present Applicant is the main accused. The assault is brutal and, therefore, he does not deserve to be released on bail.

8. I have considered these submissions. The statements of eye witnesses Bangar and Mirge are recorded on 24.12.2015 and both of them have specifically named the Applicant and have also attributed the specific role to

him. The postmortem notes show that there were sixteen incised and chop wounds. So it is without doubt that the assault was brutal. There is statement under Section 27 of the Evidence Act made by the Applicant which has led to the recovery of a blood stained weapon and the blood stained clothes. All these circumstances and statements of the eye witnesses are incriminating against the present Applicant.

9. As far as the evidence of conspiracy is concerned, there are statements of witnesses Mayur Salunke, Abhishek Kavade, Ramesh and Swapnil. These witnesses had allegedly heard the conversation between the accused. They were discussing the necessity to eliminate the deceased. However, the other accused who have taken part in their conversation, are granted bail.

10. The main gang-leader Tushar Gogavale is granted bail. At this stage it is debatable whether the provisions of the MCOC Act can be used only against the Applicant. Therefore, the bar of Section 21(4) of the MCOC

Act will not operate. The main consideration is whether the Applicant can be kept in custody without trial for an inordinately long period for the main offence of murder. In this background it must be noted that the Applicant is in custody since 2.1.2016. Till today, the charges are not framed. The directions issued by this Court on 18.6.2021 for expediting the trial were also not complied with. The trial has not even commenced. It will further take a long time to examine the witnesses and to reach the conclusion of the trial. By any standard, the period of more than eight years is an inordinately long period to keep a person behind bars as an under-trial prisoner without commencement of the trial. Therefore, mainly on this ground the Applicant deserves to be released on bail. However, considering the seriousness of the offence and the enmity between the parties, some conditions are required to be imposed on the Applicant. The trial also needs to be conducted expeditiously though the accused are on bail.

11. Hence, the following order :

ORDER

- (i) In connection with C.R. No.267/2015 dated 24.12.2015 registered at Paud police station, District-Pune., the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant shall report to the Paud police station, District-Pune once every fortnight till conclusion of the trial.
- (iii) The Applicant shall not tamper with the evidence and shall not threaten any witnesses.
- (iv) The Applicant shall cooperate with the early disposal of the trial. The learned trial Judge shall give due weightage to the directions issued by this Court in the order dated 18.6.2021 passed in Criminal Bail Application No.694/2020 for expediting the trial.
- (v) Criminal Bail Application stands disposed of accordingly. Interim Application also stands disposed of.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
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