

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

CRIMINAL BAIL APPLICATION NO. 1519 OF 2023

Rahul Bapu Dongere
V/S

....APPLICANT

The State Of Maharashtra

....RESPONDENT

Adv. Gladys Pereira for the Applicant.
Mrs. G. P. Mulekar, APP for Respondent - State.

CORAM : N. J. JAMADAR, J.

DATE : 18TH JANUARY, 2024

P.C.:

1. This Application is for bail in C.R. No. I-52 of 2018 registered with Ulhasnagar Police Station for the offences punishable u/s. 364(A), 385, 386, 387, 341, 120(B), 201 of the Indian Penal Code, 1986, u/s. 3 and 25 of Arms Act, 1959 and u/s. 37(1), 135 of the Mumbai Police Act, 1951 and u/s. 3(1)(i), 3(1)(ii), 3(2), 3(3), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as "MCOC Act").

2. The prosecution case, in brief, can be stated as under:

3. Naresh Ramnani, the first informant is a businessman. Dipak Khiyani, accused and brother-in-law of the first informant had informed the co-accused Ramesh Anand Punjabi that the financial

position of the first informant was very sound and if extortion was demanded, the first informant would pay the same. The co-accused - Ramesh Panjabi apprised the said fact to the co-accused Vikki @ Vikrant Prakash Jadhav, the alleged gang leader. The later in pursuance to the criminal conspiracy hatched a plan to abduct the first informant for ransom. The Applicant and co-accused Saeed Khan, Irfan Shaikh, Santosh Tihile were stated to be the members of the organized crime syndicate, of which the accused Vikrant Jadhav was the gang leader.

4. In pursuance to the said conspiracy, on 14th March, 2018 at about 10.15 pm. while the first informant was on his way to home on Avenger motorcycle, a WagonR car came across him. The first informant took a turn and proceeded ahead. The first informant was accosted by two persons, who were riding a motorcycle. They abused him. While the first informant tried to reason with them, WagonR car came there. Those two motorcyclists allegedly pushed the first informant into the said WagonR car. The accused Irfan Shaikh was at wheel of the said car. Vikrant Jadhav and Saeed Khan were in the said vehicle. The co-accused Vikrant Jadhav demanded ransom of rupees One Crore by pointing a revolver on the head of the first informant. The accused Saeed

Khan also threatened to kill the first informant by brandishing knife. The first informant was compelled to make a telephone call to his friend and ask him to come near the gate of the first informant's housing society alongwith cash amount of rupees Twenty Five Lakhs.

5. When the first informant and the co-accused reached near the corner of the society, the police party swung in action and one of the persons Saeed Khan, who was accompanying the first informant was apprehended.

6. Eventually the Applicant and co-accused - Irfan Shaikh and Vikrant Jadhav were apprehended at Navsari Toll Plaza alongwith a fire arm and thus Crime No. 110 of 2018 was registered against the Applicant and co-accused for the offence punishable u/s. 25 of the Arms Act, 1959. The Applicant came to be arrested in the instant crime by obtaining production warrant on 20th March, 2018.

7. The investigation further revealed that the offences were committed by the organized crime syndicate, of which the Applicant was a member and co-accused Vikrant Jadhav, a gang leader. Thus, post sanction, the offence punishable under MCOC

Act were applied. During the Course of the investigation, the Applicant was identified by the first informant in the TI parade. The co-accused Saeed Khan made a confession before the competent authority, which came to be recorded u/s. 18 of the MCOC Act.

8. Learned Counsel for the Applicant submitted that the Applicant had no role in the alleged occurrence. The Applicant has been falsely roped in. In none of the offences, the Applicant was impleaded as a member alongwith the co-accused - Vikrant Jadhav before the registration of the instant offence. Subsequent to the registration of the instance offence, the Applicant was shown as Accused in two of the crimes. In C.R. No. 110 of 2018 registered with Navsari police station, the Applicant alongwith co-accused came to be duly acquitted. According to learned Counsel for the Applicant, the Applicant has been in custody since 27th March, 2018. Thus, this long period of incarceration in itself constitutes a justifiable ground to set the Applicant at liberty. It was further submitted that having regard to the long period of incarceration, this Court has released co-accused Santosh Tihile in Bail Application No. 1562 of 2023.

9. The prosecution resisted the prayer for the bail. An Affidavit-

in-Reply came to be filed on behalf of the prosecution.

10. Learned APP submitted that the role of the Applicant is distinct from that of the co-accused - Santosh Tihile, who was ordered to be released on bail. The Applicant has been specifically identified by the first informant. Moreover, the Applicant has been shown as co-accused alongwith Vikrant Jadhav, the gang leader, in few of the crimes. Therefore, the Applicant does not deserve to be released on bail.

11. I have carefully perused the report u/s. 173 of the Code and the documents annexed with it.

12. *Prima facie*, it appears that the prosecution has improved the version *qua* the role of the Applicant. From the perusal of the First Information Report it becomes evident that on 15th March, 2018 the first informant reported that he was accosted by two persons riding one motorcycle. Those two persons had raked up quarrel with him, abused him and thereafter forcibly pushed him inside the WagonR Car. It appears that post the arrest of the Applicant, a further statement came to be recorded on 30th May, 2018 to the effect that there were two motorcycles and the Applicant was riding another motorcycle.

13. The aforesaid claim of the first informant, it seems, is not *prima facie* borne out by narration of the events in the FIR. The tenor of the allegations was that initially the WagonR Car crossed the first informant, and thus the first informant took a different direction, he was chased by two riders on a motorcycle, they raked up quarrel and after arrival of the WagonR car those two motorcyclist pushed him inside the said car. The first informant did not disclose about another motorcycle and 3rd motorcycle rider. In the aforesaid view of the matter, *prima facie*, even identification of the Applicant in TI parade without any specific role having been attributed to the Applicant in FIR does not seem to advance the case of the prosecution to the extent desired by the learned APP.

14. Secondly, I find substance in the submissions of learned Counsel for the Applicant that the implication of the Applicant as a member of the organized crime syndicate of which accused - Vikrant Jadhav is stated to be the gang leader is a matter, which requires consideration.

15. It would be suffice to note that three cases are shown to have been be registered against the Applicant alongwith Accused

no. 1-Vikrant Jadhav. Learned Counsel for the Applicant submitted that each of the three CRs was registered after the alleged occurrence. The CR No. 55 of 2018 for the offences punishable u/s. 386, 448 r/w. 34 of IPC in which Vikrant Jadhav, Irfan Shaikh and Saeed Khan were shown, as accused apart from the Applicant, came to be registered on 31st March, 2018. The alleged incident had occurred in the month of December, 2017. Secondly, the Crime No. 40 of 2018 also came to be registered at Ulhasnagar police station for offences punishable u/s 384, 387, 12(b) r/w 34 of IPC on 31th March, 2018 in respect of an incident which had allegedly occurred on 9th December, 2017. The 3rd CR, being, Crime No. 110 of 2018 was registered on 21st March, 2018, based on the alleged occurrence. In the said prosecution, the Applicant and the co-accused came to be acquitted by the judgment and order dated 3rd March, 2023.

16. The fact remains that before the commission of the alleged offences in question, the Applicant was not shown as accused in any of the cases registered alongwith co-accused no. 1 - Vikrant Jadhav or any of the co-accused either jointly or independently. Thus, there is substance in the submission made on behalf of the Applicant that the implication of the Applicant in those three

cases, subsequent to subject crime, could be to justify the invocation of the provisions contained in MCOC Act.

17. At this juncture, the fact that this Court has exercised discretion in favour of the co-accused – Santosh Tihile assumes significance. The role attributed to the said co-accused, as noted above, is that of forcing the first informant to board the WagonR Car. The FIR, *prima facie*, does not indicate that the Applicant was present at the time the first informant was allegedly pushed into WagonR Car. In the circumstances, I find it difficult to accede to the submission made on behalf of the prosecution that the role of the Applicant stands on greater footing. On the contrary, in view of the *prima facie* omission to state about the 3rd motorcycle, the Applicant's case stands on a better footing. Thus, the twin conditions mentioned in Section 21 of the MCOC Act can be said to have been fulfilled.

18. In the aforesaid view of the matter and having regard to the fact that the Applicant has been in custody since 28th March, 2018, the Applicant deserves to be released on bail, both on merits and on account of long incarceration.

19. Hence, the following order:

ORDER

- (i) Application stands allowed.
- (ii) The applicant be released on bail in C.R. No. I-52 of 2018, registered with Ulhasnagar Police Station on furnishing a PR Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount.
- (c) The applicant shall attend the Ulhasnagar Police Station once in a month i.e. on the first Monday of every month in between 11.00 a.m. and 1.00 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) Except for attending the trial and for the purpose of reporting to the Investigating Ofcer, the applicant shall not enter Thane District after being released on bail, till the trial

concludes.

(g) The applicant shall attend the trial regularly.

(h) The applicant shall not leave the State of Maharashtra without the permission of the trial Court.

Application stands disposed.

(N. J. JAMADAR, J.)