



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

BAIL APPLICATION NO.1439/2023

SACHIN SAMSON KHEMA

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Vikas Shivarkar a/w Adv. Devidas K. Botkondle for the
Applicant.

Mr. B.B. Kulkarni, APP for the State.

API Sachin Patre, Mahatma Phule Chowk Police Station.

CORAM : M. S. KARNIK, J.

DATE : MARCH 20, 2024

P.C. :

1. Heard learned counsel for the applicant and learned APP
for the State.

2. This is an application for bail in respect of the offence
punishable under Sections 307, 387, 324, 504, 506, 143,
147, 148, 149, 120-B of the Indian Penal Code ("IPC" for
short), Sections 37(1) and 135 of the Maharashtra Police Act
and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra
Control of Organised Crime Act, 1999 ("MCOCA" for short),
registered on 05/01/2022 vide C.R. No.16 of 2022 with
Mahatma Phule Chowk Police Station, Thane.

3. There are in all 6 accused. The applicant is accused

No.2. The date of the incident was 05/01/2022. The applicant is the gang leader. So far as the present offence i.e. C.R. No. 16 of 2022 is concerned, it is alleged that the co-accused assaulted the injured witness Amjed Sayyed. A reference to C.R. No. 14 of 2022 lodged against the present applicant under Section 324, 323, 504 and 506(2) is necessary. C.R. No. 14 of 2022 was lodged by Bhushan Jadhav against the present applicant and another co-accused. It is the prosecution's case that the applicant was under the impression that C.R. No. 14 of 2022 was filed against him at the behest of Amjed Sayyed who is an injured witness in the present case. The prosecution case reveals that Amjed Sayyed was threatened by co-accused Nitin Khema and other accused for registering C.R. No. 14 of 2022. Thereafter, injured witness Amjed Sayyed was assaulted with a sword. Admittedly, the applicant was not present at the spot of the incident where the assault took place. The applicant is not an assailant.

4. Learned APP vehemently opposed the application and submitted that the applicant was the mastermind and he is the main conspirator. It is submitted that as the applicant was

annoyed by Bhushan Jadhav for registering C.R. against him and that the applicant instigated the co-accused to commit the offence and, therefore, assault on Amjed Sayyed. It is also submitted that there are Call Detail Records (CDRs) of the present applicant which indicates his complicity.

5. The CDRs reveal that prior to the date of the incident and even thereafter there was no exchange of any calls between the applicant and other co-accused. So far as the present C.R. is concerned, neither the applicant is an assailant nor there are any materials against the applicant to show his complicity as a conspirator. *Prima facie*, there is suspicion of the applicant's involvement in the present offence. My attention is invited to the confessional statement of co-accused Satej Pokal. From the reading of the statement, it appears that the applicant was asking Satej to clarify to Bhushan Jadhav that the applicant has nothing to do with C.R. No. 14 of 2022.

6. So far as the MCOCA which is invoked against the applicant, out of 8 cases which includes the present offence, the applicant has been acquitted in 3 cases and the remaining 5 cases are pending.

7. The applicant was arrested on 15/01/2022 and is now in custody for more than 2 years and 2 months. The trial is not likely to conclude any time soon. Having regard to the role of the applicant in the present C.R., in the facts and circumstances of the present case, in my opinion, the bar under Section 21(4) of the MCOCA is not attracted. As I propose to impose stringent conditions while enlarging the applicant on bail, it is unlikely that the applicant may commit any other offence during the pendency of the trial. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Sachin Samson Khema in connection with C.R. No.16 of 2022 registered with Mahatma Phule Chowk Police Station shall be released on bail on his furnishing P.R. Bond of Rs.50,000/- with one or more local sureties in the like amount.
- (c) Except for attending the trial in the present case as well as in other pending cases and for reporting to the Investigating Officer, the applicant shall not enter Thane and Mumbai/Mumbai Suburban districts after being released on bail, till the trial concludes.
- (d) The applicant shall report to the Investigating

Officer of Mahatma Phule Chowk police station once in a month, first Wednesday of every month, between 11.00 a.m. and 1.00 p.m.

(e) 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.

(f) On being released on bail, the applicant shall furnish his contact number and residential address, while residing outside Thane and Mumbai/Mumbai Suburban districts, to the Investigating Officer and shall keep him updated, in case there is any change.

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(h) The applicant shall surrender his passport to the investigating officer. If the applicant does not have a passport, the applicant shall file an affidavit before the trial Court to that effect.

(i) If the applicant breaches any of the conditions, the prosecution will be at liberty to apply for cancellation of this bail.

8. The application is disposed of.

(M. S. KARNIK, J.)