



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

CRIMINAL APPEAL NO. 877 OF 2023

Vidyasagar @ Rajesh @ Lajya
Namdev Chavan
VS.

..Appellant

1. The State of Maharashtra
2. Raju Kachru Garad

..Respondents

Mr. Aniket Nikam i/b Mr. Amit Icham, for the appellant.
Mr. Subir Sarkar, for Respondent No.2.
Mr. A. R. Patil, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 24, 2024

ORAL JUDGMENT :

1. Heard learned counsel for the appellant, learned APP and learned counsel for the respondent no.2.
2. This is an appeal challenging the order of the Special Judge rejecting the application for bail filed by the appellant in connection with C.R. No. 125 of 2018 dated 23/07/2018 registered with Ichalkaranji police station for the offences punishable under sections 302, 143, 144, 147, 148, 149, 201, 120B of the Indian Penal Code, 1890 ("IPC", for short), under section 3(2)(VA) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, under

section 135 of the Maharashtra Police Act and under sections 3(1)(ii), 3(2), 3(4), 3 (5) of the Maharashtra Control of Organised Crime Act, 1999 (hereafter 'MCOCA', for short). The FIR is dated 23/07/2018. The date of the incident is 23/07/2018. The appellant is arrested on 23/07/2018. There are in all 7 accused. The appellant is the accused no.5.

3. The case of the prosecution in brief is that the accused followed the deceased who was on his motorcycle. The accused were upset as the deceased did not join their gang and instead, was reporting their activities to the police station. 4-5 accused were armed with the sharp edged weapons with which they assaulted the deceased. There are 2 eye-witnesses. Both the eye-witnesses say that so far as the present appellant is concerned, he was not armed with any weapon. One of the eye-witness does not attribute any role to the appellant except for the fact that he was present with the other accused. The other eye-witness Raju Patil has attributed role to the appellant that he had held the hands of the deceased when the co-accused had assaulted the deceased with the sharp edged weapons.

4. Learned APP as well as learned counsel for the respondent no.2 appointed by this Court vehemently opposed the appeal. Learned APP submitted that there are eye-witnesses to the incident and specific role had been assigned to the appellant to show his complicity. Learned counsel for the respondent no.2, apart from submitting that eye-witness has stated about the appellant's active involvement also submits that the rigours of section 21 of MCOC Act will apply in the present case. It is the submission of learned counsel that section 149 of IPC has been invoked. From the appellant's role, he submits that it is clear that the appellant shared a common object with the other co-accused in commission of crime under section 302 of IPC.

5. As indicated earlier, the assault on the deceased was by the co-accused who were armed with the sharp edged weapon. The appellant was present at the spot. One of the eye-witness said that the appellant held the hands of the deceased while other co-accused assaulted him. The appellant was arrested on 23/07/2018 and is now in custody for more than 5 and half years. I am informed that even

charge has not been framed. The trial is likely to take a long time to conclude. No doubt the rigours of section 21 of MCOC Act apply in the present case as the provisions of MCOC is invoked. So far as the appellant is concerned, there are no criminal antecedents reported against the appellant. This is the first offence registered against him in respect of the gang of which the co-accused Adarsh Germany is the gang leader. Though the appellant was present at the time of assault, prima facie, it appears doubtful whether the present appellant is part of the organized crime syndicate. Considering the role of the appellant coupled with the fact that the appellant is in custody for more than 5 and half years with no possibility of trial concluding anytime soon and as there are no criminal antecedents reported against the appellant, I am inclined to enlarge the appellant on bail by imposing conditions. Long incarceration coupled with the other facts indicated in my opinion are sufficient to get over the rigours of section 21 of MCOC Act. As there are no criminal antecedents reported, it is unlikely that the applicant will commit the any offence while on bail. Hence, the following order.

ORDER

(a) The appeal is allowed.

(b) The appellant- Vidyasagar @ Rajesh @ Lajya Namdev Chavan in connection with C.R. No. 125 of 2018 registered with Ichalkaranji police station shall be released on bail on his furnishing P.R. Bond of Rs.50,000/- with one or more sureties in the like amount.

(c) The appellant shall attend the investigating officer of the concerned police station once in a month on first Monday of every month between 11.00 a.m. and 1.00 p.m.

(d) The appellant shall not reside in Hatkanangale-Taluka after being released on bail, till the conclusion of the trial or subject to further modification of the conditions by the trial Court at any stage.

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

(f) the appellant shall not tamper with the witnesses.

6. The appeal is disposed of.

7. I appreciate the valuable assistance rendered by Mr.

Subir Sarkar, the learned Advocate appeared on behalf of respondent No.2 in this proceeding who was appointed by Legal Services Authority.

(M. S. KARNIK, J.)