

Arjun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2012 OF 2023**

Dharmesh @ Dharmya Shamkant Patil ...Applicant
Versus
 The State of Maharashtra ...Respondent

Mr. Shailesh Chavan a/w Prithviraj Deshmukh i/b Nagesh S. Khedkar, for the Applicant.

Mr. Prasanna Malshe, APP, for the Respondent-State.

**CORAM : MADHAV J. JAMDAR, J.
DATED : FEBRUARY 28, 2024**

P.C.:

- 1.** Heard Mr. Chavan, learned Counsel appearing for the Applicant and Mr. Malshe, learned APP for the Respondent-State.
- 2.** This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1	C. R. No.	428 of 2019
2	Date of registration of F.I.R.	15/03/2019
3	Name of Police Station	Pimpri Police Station, Pune
4	Section/s invoked	302, 341, 143, 147, 148 & 149 of the <i>Indian Penal Code, 1860</i> ; 37(1) & 135 of the <i>Bombay Police Act, 1951</i> ; 25 (4) of the <i>Arms Act, 1959</i> .
5	Date of incident	15/03/2019

6	Date of arrest	15/03/2019
7	Date of filing Charge-sheet	10/06/2019

3. As per the prosecution case, the incident in question has happened on the intervening night of 14th March 2019 and 15th March 2019. The deceased, the informant and other eye-witnesses were returning from the company in a tempo traveller vehicle which had been provided by the company for travelling to the residence of employees. At that time, two unknown persons stopped the said tempo traveller and one of them slapped the deceased. The deceased then alighted the vehicle and other co-Accused came there and assaulted the deceased with kicks and fist blows. One of them assaulted the deceased with a chopper and then all the assailants fled from the spot. The deceased succumbed to the resultant injuries.

4. Mr. Chavan, learned Counsel appearing for the Applicant submitted that there are a total of 4 Accused. Two of them have been enlarged on bail. The Applicant is the Accused No.1. The Accused No.2-Yashwant Gaikwad has been identified in the Test Identification Parade and he has not been granted bail by any of the Courts. The Accused No.3-Swapnil Kamble has been granted bail by Order dated 5th February 2020 passed by a learned Single Judge [Prakash D. Naik, J.] in Bail Application No.3058 of 2019. The Accused No.4-Amar Vijay Kedari has been granted bail by

Order dated 15th September 2023 passed by learned Additional Sessions Judge, Pune, below Exhibit 36 in Sessions Case No.622 of 2019. He submitted that the F.I.R. was lodged against unknown persons and in the Test Identification Parade, the Informant as well as other eye-witnesses have not identified the Applicant. He submitted that in the Test Identification Parade, the Accused No.2-Yashwant Gaikwad has been identified by the Informant as well as the eye-witnesses. He submitted that the Applicant was arrested on 15th March 2019 and is under incarceration ever since. He submitted that till date, there is no progress in the trial and even the charge is also not framed yet.

5. On the other hand, Mr. Malshe, learned APP strongly opposed the Bail Application. He submitted that the Applicant was released on temporary bail due to COVID-19 pandemic in May 2020 but he was again arrested in December 2020 in C. R. No.730 of 2020 resulting in invoking the *Maharashtra Control of Organised Crime Act, 1999* ("MCOCA") against him. He submitted that he is a 'gang leader'. He submitted that there are 5 antecedents against the present Applicant including one offence in which the provisions of MCOCA have been invoked. He submitted that therefore no case is made out for granting bail and bail be refused.

6. As far as the antecedents are concerned, Mr. Chavan,

learned Counsel appearing for the Applicant submitted that in all these cases, the Applicant has been granted bail. He submitted that C. R. No.730 of 2020 in which the provisions of MCOCA have been invoked, there too the Applicant has been granted bail. He pointed out paragraph No.4 of the Order dated 31st March 2023 passed by learned Additional Special Judge under MCOC Act, Pune, below Exhibit 43 in Spl. MCOCA Case No.407 of 2021. He therefore submitted that the case for granting bail is made out.

7. A perusal of the record shows that the incident in question has taken place on the intervening night of 14th March 2019 and 15th March 2019 and the Applicant has been apprehended on the very day i.e. 15th March 2019. The Charge-sheet was filed on 10th June 2019. The Applicant is incarcerated since 15th March 2019. Till date, except for the period of about 6 months when the Applicant was released on temporary bail due to COVID-19, the Applicant is incarcerated for about 4 and ½ years. As far as the progress in the trial is concerned, even the charge is also not framed yet. As per the prosecution case, there are a total of 39 witnesses proposed to be examined by the prosecution. Therefore the trial will not conclude shortly and it will take a considerably long time.

8. This is a case where the F.I.R. was lodged against unknown persons and the Informant and eye-witnesses have not identified

the Applicant. Therefore, *prima facie*, the material on record does not appear to connect the Applicant with the offence in the present case.

9. As far as the five antecedents are concerned, the Applicant has been granted bail in all the cases. Out of said five antecedents, in one offence the Applicant was a juvenile. One antecedent is of the year 2014. Two of them are of the year 2018 and another one is of the year 2019. As far as the C. R. No.730 of 2022, lodged under Section 397 of the *Indian Penal Code, 1860* and Sections 4 and 25 of the *Arms Act, 1959*, provisions of the MCOCA were invoked. In the said case, the Applicant has been released on bail by Order dated 31st March 2023 passed by learned Additional Special Judge under MCOC Act, Pune, below Exhibit 43 in Spl. MCOCA Case No.407 of 2021. The relevant discussion in the said order is in paragraph No.4, which reads as under :-

“4] Admittedly, the substantive offence bearing Crime No.730/2020 is registered under Section 397 of the IPC. Incident occurred on 05.12.2020 and FIR is lodged on 06.12.2020. The applicant/accused came to be arrested on 07.01.2021. The charge-sheet is already filed. It is interesting to note here that out of same incident FIR was lodged against informant Sahil Ahmed Shaikh by accused Swapnil Kamble. Accordingly, Crime No. 721/2020 was registered, in which anticipatory bail is granted to Sahil Ahmed Shaikh by order dated 27.01.2021 in Criminal Bail Application No. 4975/2020.

In present crime also anticipatory bail application No. 5253/2020 filed by one of the main accused Swapnil Kamble is allowed by order dated 08.01.2021. Thus, the main accused Swapnil Kamble, who was cause for the incident, is on anticipatory bail and is never arrested by the police. Interestingly the informant Sahil Ahmed Shaikh filed affidavit in Special MOCA Court stating that he has not named the applicant and co-accused in the FIR and it was lodged against unknown persons. Considering all these facts, it will not be just and proper to keep the applicant/accused behind the bars, who is languishing in jail for more than 1 ½ year. Other co-accused against whom specific allegations and role is assigned in the complaint are already released on bail. As the very complainant is saying that he had lodged complaint against unknown persons and has no grievances against the accused, there is no question of threat at the hands of accused to the complainant. Under such circumstances though applicant/accused is alleged to be gang leader and serious offences are pending against him the facts of present crime only are to be required to be considered here. In view of all above aspects the bar under MCOC Act can not be said to be applicable here to deny the bail. On the ground of merit as well as on parity the applicant/accused is entitled to be released on bail.”

10. The Applicant is incarcerated in this case for more than 4 and ½ years. There is no possibility of conclusion of the trial in the near future and in fact the trial has not commenced and even

the charges are also not framed yet. Accordingly, the Applicant is entitled to be released on bail.

11. As most of the witnesses are from District-Pune and all the antecedents also from District-Pune and are registered at Pimpri Police Station, Pune, the Applicant shall not enter District-Pune. Mr. Chavan, learned Counsel appearing for the Applicant, after taking instructions, states that the Applicant will reside at C/o. Ramchandra Dajiba Patil, At-Kingaon, Taluka-Yawal, District-Jalgaon and he will report to Yawal Police Station, District-Jalgaon.

12. The Applicant does not appear to be at risk of flight.

13. Accordingly, the Applicant can be enlarged on bail by imposing conditions. In view thereof, the following order:-

ORDER

- (a) The Applicant - Dharmesh *alias* Dharmya Shamkant Patil be released on bail in connection with C. R. No.428 of 2019 registered with the Pimpri Police Station, District- Pune on his furnishing P.R. Bond of Rs.50,000/- with two solvent sureties in the like amount.
- (b) The Applicant shall not enter the Pune district after being released on bail, except for reporting to the Investigating Officer, if called and for attending the trial.
- (c) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.

- (d) The Applicant shall report to the Yawal Police Station, District-Jalgaon once every week, on every Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Yawal Police Station, District-Jalgaon to communicate details thereof to the Investigating Officer.
- (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 such a person from disclosing the facts to the Court or to any Police personnel.
- (f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.
- (h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

14. The Bail Application is disposed of accordingly.

15. It is clarified that the observations made herein are *prima facie* and the Trial Court shall decide the case on its merits and uninfluenced by the observations made in this Order.

[MADHAV J. JAMDAR, J.]