



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

**CRIMINAL APPLICATION NO. 119 OF 2023
WITH
CRIMINAL APPLICATION NO. 282 OF 2022**

VAISHALI MANOJ MHATRE ..APPLICANT
VS.
THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Adv. M.K. Kocharekar i/b Adv. Saurabh Butala for the
Applicant.

Adv. D.N. Salvi (Spl. P.P.) a/w Adv. Sangeeta Shinde APP
a/w Adv. Sahil Salvi, Adv. Sagar Redkar, Adv. Narendra
Kalpoth and Adv. Vishal Kilanje for the State.

Adv. Vinay Bhanushali a/w Adv. Sanmit Vaze and Adv.
Jitesh Bhanushali for Respondent No.2 in APL/119/23.

S.M. Tawade, ASI of Crime Branch.

CORAM : M. S. KARNIK, J.

DATE : APRIL 16, 2024

P.C. :

1. I have heard learned counsel Shri Kocharekar for the
applicant/victim, learned SPP Shri Salvi for the respondent-
State and learned counsel Shri Bhanushali appearing on
behalf of the accused/respondent No.2 in Criminal
Application No. 119 of 2023.

2. These are the applications for cancellation of bail

granted by the trial Court to the accused Sujit and Ganesh.

So far as the facts of the case are concerned, for ease of reference, it would be appropriate to rely upon the order dated 19/08/2019 passed in Bail Application No. 207 of 2019 by this Court, in respect of respondent No.2- Sujit @ Tatya Madhukar Patil earlier filed. The order reads thus:

"1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. I-61 of 2017 registered with the Narpoli police Station, Thane, for the alleged offences punishable under Sections 302, 143, 146, 147, 148, 149, 120B of the Indian Penal Code; under Sections 3, 25 (1B), 27(2), 4, 17 of the Arms Act; under Sections 37(1), 135 of the Maharashtra Police Act and under Sections 3(1) (i), 3(2), 3(4) of the Maharashtra Control of Organized Crimes Act.

3 Learned senior counsel for the applicant submitted that taking the prosecution case as it stands, at the highest, it appears that the applicant was present at the time when the conspiracy to kill Manoj Mhatre was hatched. He submitted that however, there is no material to show that thereafter, the applicant executed, participated or played any role in furtherance of the said conspiracy. He submitted that at the highest, what can be said about the applicant is that he was keeping bad company and had joined the bad company at the wrong time. Learned senior counsel relied on the Division Bench Judgment of this Court in the case of Ajay Ramchandra Kokare vs. State of Maharashtra (2009 All MR (Cri.) 862). He further submitted that the applicant has been acquitted in all the six cases registered against him and that the only case which is pending is C.R. No. 22/2017 registered with the

Narpoli Police Station for the alleged offences punishable under Sections 15 and 16 of the Environment Act r/w Section 48 (7)(8) of the Revenue Rules. He further submitted that the applicant was taken into custody from the said C.R. i.e. C.R. No. 22/2017, in which, the applicant was arrested on 21st September 2017 and his custody was transferred in the present C.R. on 4th October 2017. He submitted that the applicant has neither been named in the FIR nor in the supplementary statement by the complainant. He further submitted that there is no material on record to show that the applicant participated in furtherance of the criminal conspiracy allegedly hatched on 14th February 2017 at about 2:30 p.m. and as such, cannot be saddled with the ultimate execution of the criminal conspiracy, in the absence of any material.

4 Learned A.P.P opposed the application. Learned A.P.P has filed an affidavit of Nivrutti T. Kadam, Assistant Commissioner of Police, (Detection-2), Crime Branch, Thane City. Learned A.P.P states that apart from the statement of Viddesh Sudam Patil, there are 7 confessions/statements of other co-accused recorded under Section 18 of the MCOC Act, which clearly point to the complicity of the applicant. He submitted that the confessions of the accused show that the applicant was present when the conspiracy to kill Manoj Mhatre was hatched and that all those who were present at the conspiracy had given their approval for the same. He further submitted that the CDR records also show that the applicant was present in that area when Manoj Mhatre was killed at about 8:45 – 9:00 p.m. and that the applicant was in touch with the co-accused.

5 Perused the papers. There are confessional statements of co-accused which show that on 14th February 2017 at about 2:30 p.m, all the accused including the applicant met at Sai Raj Enterprises (owner being co-accused Viddesh Patil). The said confessional statements show that they were sitting and consuming alcohol, when Prashant Mhatre was abusing Manoj Mhatre and was holding him responsible for his defeat in the election. Prashant

Mhatre is also alleged to have stated that they should kill Manoj Mhatre and for that he was ready to pay Rs. 50,00,000/- and incur all legal expenses. It appears that all the accused gave an affirmative reply to the same, pursuant to which, firing practice was done soon thereafter and at about 8:45 p.m. to 9:00 p.m., some of the co-accused executed the plan and killed Manoj Mhatre. The CDR records show that the applicant was present on the spot. Although, the applicant is not alleged to have been part of the team that ultimately executed the assault on Manoj Mhatre, prima facie, what appears from the confessional statements of co-accused is that the applicant was present when the conspiracy was hatched and that all the accused who were present at the spot including the applicant gave their approval when a call to kill Manoj Mhatre was given. The CDR record shows the presence of the applicant on the spot. The applicant was also present at the spot, soon after the firing. The execution was also done on the very same day i.e. between 8:45 p.m to 9:00 p.m. The judgment relied upon by the learned senior counsel does not apply to the facts of the present case and is clearly distinguishable.

6 Considering the material on record, this is not a fit case to enlarge the applicant on bail. The application is accordingly rejected.

7 It is made clear that the observations made herein are prima facie, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

8 In view of the above order, the intervention application being Criminal Application No. 794 of 2019 does not survive. The same is also disposed of."

3. After the application for bail of the respondent No.2

Sujit came to be rejected, he filed a Special Leave to Appeal

(Crl.) No(s). 3799 of 2020 before the Supreme Court. By order dated 01/09/2020, the petition came to be withdrawn and was accordingly dismissed. The said order reads thus:

“ After some arguments, learned senior counsel for the petitioner seeks to withdraw the petition.

The special leave petition is accordingly dismissed as withdrawn.”

4. It is material to note that respondent No.2 filed an application for bail before the trial Court below Exhibit 199. By an order dated 08/09/2022, the trial Court allowed the application and respondent No.2- Sujit was enlarged on bail on furnishing P.R. and S.B. of Rs.1,00,000/- with one or more sureties of like amount. The trial Court while granting bail to Sujit has observed in paragraph No. 18 that there are substantial changes in the circumstances, misleading of Court, long incarceration of applicant and attracting the provisions of MCOC Act to the case of applicant are the material factors which requires reconsideration. A reading of the order passed by the trial Court from paragraph No. 19 would reveal that the trial Court has reconsidered the entire materials on record and observed in paragraph No.24 that at the time of deciding earlier bail application the fact of

offences committed in the capacity as a member of organised crime syndicate either singly or collectively or he committed the offence in his individual capacity was not brought to the notice of the Court. Apart from considerations on merits, the trial Court observed in paragraph No. 25 that "it cannot be ignored that the applicant is in jail since last five years. Charge is not framed yet against him and others. There is list of more than 125 witnesses to be examined by the prosecution. It may take a considerable period for recording of evidence of the witnesses". It was further observed that considering the huge pendency of the cases, particularly, due to COVID pandemic, the trial is not likely to be commenced in near future. These are the factors which weighed with the trial Court while enlarging respondent No.2- Sujit on bail.

5. Learned counsel Shri Kocharekar appearing on behalf of the victim for cancellation of bail granted to the accused Sujit and Ganesh, contended that once this Court by the order dated 19/08/2019 in Bail Application No. 207 of 2019 reproduced hereinbefore, rejected the bail application of

respondent No.2- Sujit on merits, the petition against which order was withdrawn before the Supreme Court, the trial Court then ought not have reconsidered the same materials on record to arrive at a conclusion different from the one recorded by this Court. No doubt, what was under consideration was the subsequent application for bail. Learned counsel for the accused Sujit and Ganesh tried to justify the observations of the trial Court granting bail to respondent No.2- Sujit and Ganesh.

6. Having considered the submissions, I do find substance in the contention of the learned counsel for the victim that once this Court has rejected the bail application of respondent No.2- Sujit on merits, the trial Court should not have reconsidered the same materials already on record while granting bail to respondent No.2 thereby coming to a conclusion different from the one arrived at by this Court. To that extent, I am inclined to observe that the trial Court was not justified in observing that there are change in circumstances which justify reconsideration of the materials as some materials were not considered when the

bail application was rejected on the previous occasion. The reason why I am not inclined to interfere with the order of the trial Court granting bail are the observations as regards the ground of long incarceration. The trial Court took into consideration that the accused Sujit was in jail since the last 5 years and even charges have not been framed against him. It is observed that more than 125 witnesses are to be examined by the prosecution and the same would take a considerable period to record the evidence of those witnesses and having regard to the huge pendency of the cases, particularly, due to COVID pandemic, the trial is not likely to be commenced in near future are the factors as to why the trial Court enlarge the co-accused Sujit on bail. As of now, I am informed that the charges have been framed but the examination of witnesses has not yet commenced.

7. It is in these facts, I do not propose to interfere with the order enlarging the accused- Sujit on bail on the ground of long incarceration. Hence, the Criminal Application No. 119 of 2023 for cancellation of bail of accused Sujit stands rejected.

8. So far as the accused Ganesh Patil is concerned, Ganesh filed the application for bail below Exhibit 173 before the trial Court. By order dated 28/02/2022, the trial Court after considering the materials on record has enlarged Ganesh on bail. I have perused the said order. In view of the reasons mentioned in paragraph Nos.6 and 7 of the said order, I do not find any reason to interfere with the order of the trial Court. Hence, the Criminal Application No. 282 of 2022 for cancellation of bail of accused Ganesh stands rejected.

(M. S. KARNIK, J.)