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

CRIMINAL BAIL APPLICATION NO. 4227 OF 2021

Somnath Sayaji Gaikwad

.. Applicant

Vs.

The State of Maharashtra

.. Respondent

.....

Mr. A.H.H. Ponda, Senior Counsel a/w Hasnain Kazi and Shraddha Vavhat for the applicant

Mr. A.A. Palkar, APP for the respondent – State

Mr. J.R. Phadtare, PSI, Samarth Police Station, Pune present

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CORAM : PRITHVIRAJ K. CHAVAN, J.

Closed on : 25th April, 2024

Pronounced on : 29th April, 2024

P.C.

1. This is an application for bail under Section 439 of the Cr.P.C. in connection with C.R. No.40 of 2021 registered with Samarth Police Station, Pune for the offences punishable under Sections 307, 143, 147, 148, 149, 504, 506, 120(B), 109 of the Indian Penal Code, Section 4 r/w Section 25 of the Arms Act, Sections 37(1)(3), 135 of the Maharashtra Police Act, Section 7 of the Criminal Law Amendment Act and Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (for short 'MCOC Act').

2. A few facts germane for disposal of the application can be summarized as follows.

3. The applicant is one of the 6 accused, who are being prosecuted for the aforesaid offences. The applicant has been arrested on 17.03.2021. It is essentially a rivalry between the two criminal gangs, in the sense, two gangs alleged to have been involved in various offences and essentially are two organized crime syndicates at Pune namely, Andekar gang and Suraj Thombre gang. The injured, in the present case, is one Mr. Aditya Ukarande (first informant). The first informant belongs to Andekar gang, whereas the accused are the members of Thombre gang.

4. Some years ago, Suraj Thombre and the present applicant were members of Andekar gang. However, by passage of time and in view of differences between the members of the gangs *inter se* they became rivals. The applicant was running a gambling den. In the recent past, he entered into a business of real estate. It is alleged that he was providing financial aid and funding to the organized crime syndicate of accused Suraj Thombre. Both hatched a conspiracy and did certain acts to prove their supremacy over the

rival gang in the said vicinity and with said intention, it is alleged that they planned to commit deadly assault upon the first informant Aditya Ukarande. The first informant – Aditya Ukarande was then a young boy aged about 16 years prosecuting his studies in a high school. He was attacked by the rival gangs on various occasions. It is the case of the prosecution that the first informant had uploaded his photograph on whatsapp status with a sharp edged sickle in his hand. Due to such act, the rival gang was offended and, therefore, on 23.01.2021 around 10.00 p.m. when the first informant was sitting near his house with his friends, accused Kanifnath Mahapure, Rajan Kalbhor, Gotya Mane, Shubham Pawale and Akash Saswde assaulted him with deadly weapons, such as sickles etc. Admittedly, the informant could make his escape good unhurt, in the sense, there was not a single scratch on his body. It is alleged that due to the fear of the assailants, there was some delay in reporting the matter to the police station.

5. However, an FIR came to be registered on 02.03.2021. Investigation has been carried out. Statements of the witnesses and the first informant came to be recorded, injured was referred for medical examination. Since it was continuing unlawful activities of

the members of an organized crime syndicate, a prior approval was sought from the competent Police Officer in view of Section 23(1) of the MCOC Act and, finally, before placing the charge-sheet in the Special Court, a previous sanction has also been obtained under Section 23(2) of the said Act from the Additional Director General of Police.

6. Having failed in his first attempt to secure bail from the Special Judge, MCOC Court, Pune on 01.10.2021, the applicant approached this Court.

7. I heard Mr. Ponda, learned Senior Counsel appearing for the applicant and Mr. Palkar, learned APP for the respondent State.

8. With the assistance of Mr. Ponda, I have meticulously gone through the record and proceedings. Many salient features have been brought to my notice by the learned Senior Counsel by urging that not only long incarceration of the applicant behind the bars with no prospects of trial being concluded within the reasonable time, there are other glaring aspects which entitles the applicant to be released on bail. The first and the foremost is the delay of 40 days in lodging an FIR of which, according to Mr. Ponda, no

explanation is forthcoming. Secondly, if it was a case of attempt to murder of the first informant by not less than six members of an organized crime syndicate armed with deadly weapons such as sickle etc., why there was not a single scratch on the person of the first informant, which indicates that it is a false case. Thirdly, this First Information Report is nothing but a counterblast of a crime already registered with police station bearing C.R. No.82 of 2021 against the members of Andhekar gang.

9. Apart from the aforesaid facts, Mr. Ponda would invite my attention to statement of a witness at page 202, who is said to have overheard in a hotel a conversation between the applicant and Suraj Thombre as regards hatching a conspiracy to eliminate the member of the rival gang. Next circumstance is a statement of one Navnath Mahadev Mane at page 326, who alleged to have stated that Andhekar had a suspicion in his mind that since the applicant had joined the rival gang and, therefore, necessary steps will have to be taken. Likewise, my attention has also been invited to the confessional statements of co-accused Kanifnath Mahapure and Prakash Alhat.

10. On the other hand, learned APP while strongly opposing the application for bail invited my attention to the fact that the applicant is a habitual offender against whom there are two convictions including an order of externment. There were 7 offences registered against him. Mr. Palkar, however, admits that his role is passive in the present crime and, therefore, this is not a fit case in which the applicant can be released on bail.

11. Predominant charge against the applicant was for providing financial aid to the organized crime syndicate of Suraj Thombre, who is said to be a kingpin of the said gang. The applicant's name is neither reflected in the FIR nor it is the case of the prosecution that he had actually participated in assaulting the first informant – Aditya Ukarande. In fact, he was not present at the scene of occurrence at the time of alleged incident. It is very difficult to believe that despite making an attempt on the life of the first informant by almost 6 accused armed with deadly weapons, there was not a single scratch. Of course, injury is not a *sine qua non* for the offences punishable under Section 307 of the Indian Penal Code, nevertheless, the story itself is shrouded with suspicion even on the count that there was an inordinate delay of 40 days in

lodging the FIR. Since the report is neither prompt nor indicating complicity of the applicant, it is difficult to accept the story of the prosecution that the applicant was a member of an unlawful assembly, who hatched a conspiracy to attack the first informant. Even it is not the case of the prosecution that something had been seized from the possession of the applicant, much less, the weapons alleged to have been used in the crime. Even there is no material on record to *prima facie* believe that the applicant had aided and assisted, financially, Suraj Thombre gang for their unlawful activities.

12. It is quite apparent from the statements of the witnesses and the charge-sheet that this is a tug-of-war between the two rival gangs for supremacy or control over the area of their operations. In the absence of any shred of evidence indicating financial aid being given to the organized crime syndicate of Suraj Thombre gang, I am afraid it is difficult to accept the contention of Mr. Palkar that the applicant has been abetting or rendering any financial assistance to the organized crime syndicate of the Suraj Thombre gang.

13. It seems that since the applicant has parted his ways from the Andhekar gang and joined Suraj Thombre gang, appears to be *prima facie* a reason to book him in this case in light of the fact that Crime No.82 of 2021 was registered first in point of time against the members of Andhekar gang and in order to counterblast the same, present Crime No.40 of 2021 came to be registered implicating the applicant. Crime No.82 of 2021 had already been registered by the accused in the present Crime No.40 of 2021 against the first informant of the present crime. As already stated, nothing is forthcoming as to why such an inordinate delay has occurred in lodging the FIR.

14. There is a truncated statement of a witness, who is said to be a rickshaw driver and was acquainted with the members of both the rival gangs, including the applicant. His statement appears to have been recorded on 06.03.2021 by the Investigating Officer. The sum and substance of his statement is that some times in the month of January 2021, a passenger had hired his rickshaw in Katraj area. After leaving the passenger at his destination, he had been to hotel Ambika for having snacks as he was hungry. He noticed that applicant and Suraj Thombre were already sitting in the hotel and

discussing something. He just occupied a table behind them and had listen the conversation wherein, according to him, he overheard applicant telling Suraj Thombre that Udaykant Andhekar and Krishna Andhekar now becoming active and, before, they establish their hold and terror in the vicinity of their gang, they should do something. The applicant, thereafter, alleged to have asked Suraj Thombre to tell some of his boys to attack the members of the rival gangs in order to create a terror. It would further establish the superiority of their gang. The statement further reveals that the applicant alleged to have informed Suraj Thombre that he would get legal aid and he need not bother about the legal fees in the event Suraj Thombre succeeds in his attempt to eliminate Krishna Andhekar. This appears to be far fetched and *prima facie* unacceptable as to how such a conspiracy could be hatched in an open public place, that too, when this witness was sitting just behind them. Even, there is no explanation why the said statement came to be recorded more than two months after the alleged incident.

15. So far as statement of one Navnath Mane is concerned, it reiterates that Andhekar had a suspicion in his mind with regard to

the applicant joining his rival gang of Suraj Thombre.

16. In so far as confession of accused – Kanifnath Vinod Mahapure is concerned, which appears to have been recorded by the Deputy Commissioner of Police on 17.03.2021 in view of Section 18 of the MCOC Act, indicates about rivalry between the two gangs and an attempt by the members of the rival gang to assault the members of Suraj Thombre gang. He had specifically stated that the first informant – Aditya Ukarande in this crime had been threatening him and the other accused. This statement, *prima facie*, would not indicate any overt act attributed to the applicant. At the time of considering an application for bail, it is difficult to construe whether all the safeguards and requirements have been scrupulously followed by the concerned Officer in view of Sub-sections 3, 4, 5 and 6 of Section 18 of the MCOC Act.

17. The applicant appears to have been convicted by JMFC, Pune for the offences punishable under Section 3(25) of the Arms act and was sentenced to suffer Rigorous Imprisonment for one year and fine of Rs.1,000/- on 17.06.2013.

18. There is one more conviction handed down to the applicant

and others by the Additional Sessions Judge, Pune on 22.12.2011 for the offences punishable under Sections 143, 147, 148 r/w 120B of the IPC wherein they were sentenced to suffer Rigorous Imprisonment for 2 years and fine of Rs.2,000/-. They have also been convicted under Section 307 r/w 34 of the Indian Penal Code and were sentenced to suffer life imprisonment and fine of Rs.5,000/-.

19. The learned Senior Counsel would argue that these are the cases which were alleged to have been committed long back in the year 2010-2011. The appeals have been preferred and the applicant has been granted bail by this Court. No doubt, there are two previous convictions *qua* the applicant, however, he has been granted bail pending the appeal by this Court.

20. Having given an opportunity to the prosecutor to oppose the application for bail, I am satisfied that there are reasonable grounds for believing that the applicant is not guilty of the offences of unlawful assembly and attempt to murder of the first informant. These are tentative findings, which will not have any bearings on the merits and demerits of the case during trial.

21. However, considering the material on record as discussed hereinabove and also in light of the fact that he has been incarcerated more than 3 years, I am inclined to admit him on bail.

22. Consequently, the following order is passed :-

ORDER

- (a) The application is allowed.
- (b) The applicant – Somnath Sayaji Gaikwad be released on executing a PR bond in the sum of Rs.1,00,000/- (Rupees One lac) with two solvent sureties in the like amount to the satisfaction of the Special Judge, MCOC Court, Pune.
- (c) The applicant shall attend the concerned Police Station on every second and forth Sunday of each month between 10.00 a.m. to 1.00 p.m. till the charge is framed.
- (d) The applicant shall not enter into the jurisdiction of Revenue District of Pune except for attending the concerned police station, until further orders.
- (e) The applicant shall not tamper with the evidence or attempt to influence or contact any of the witnesses or persons concerned with this case.

(f) The applicant shall surrender his passport, if any, to the Investigating Officer immediately.

(g) The applicant shall furnish his residential address and contact details to the respondent and the trial Court immediately after his release. In case of change in contact details or residential address, same shall be forthwith informed to the trial Court and the respondent.

(h) In case of breach of any of the conditions hereinabove, liberty to the prosecution to seek cancellation of bail of the applicant.

23. The application stands disposed of in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN, J.)