

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3650 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Date: 2024.03.05
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Uday Sunil Salpekar

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Satyvratt Joshi, a/w Samay Pawar and Kanishka
Hasabnis, for the Applicant.

Mr. Shailesh Ghag, APP for the State/Respondent.

ACP Sampatrao Patil, present.

CORAM: N. J. JAMADAR, J.

DATED: 4th MARCH, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. This is an application for bail in MCOC Special Case No. 141 of 2022 arising out of FIR bearing CR No. 97 of 2021 registered with Meghwadi police station for the offences punishable under sections 120-B, 307, 326, 188, 143, 144, 147, 148 and 149 of Indian Penal Code, 1860, section 3(1)(2), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 and Section 37(a)(1) read with Section 135 of the Maharashtra Police Act, 1951.
3. Mr. Joshi, the learned Counsel for the applicant, submits that co-accused Rahul Dighe and Rahul Mhaske have been

released on bail by this Court by orders dated 1st August, 2023 in BA/2510/2022 and 22nd January, 2024 in BA/3099/2023, respectively. The applicant, being similarly circumstanced, also deserves to be released on bail.

4. While releasing co-accused Rahul Dighe on bail in BA/2510/2022 this Court has *inter alia* observed as under:

3. The aforesaid crime was registered pursuant to the FIR lodged by Raj Verma. The facts narrated in the FIR prima facie reveal that on 17/04/2021, during night hours, the first informant and his friends were celebrating his birthday. On 18/04/2021, at about 00:30 hours, while the first informant was returning home, he heard some one calling out to him. When he turned around, he saw the co-accused Sandeep Pawar and Tushar walking towards him. He apprehended that they may assault him due to the previous enmity and tried to run away. However, the co-accused Sandeep Pawar inflicted an injury on his cheek by means of sharp weapon and the co-accused – Tushar assaulted the witness – Naresh. Pursuant to the FIR lodged by the said Raj Verma, C.R.No.97/2021 was registered with Meghwadi Police Station initially under sections 326, 188 r/w. 34 of the Indian Penal Code. Subsequently, the supplementary statement of the first informant was recorded on 18/05/2021 pursuant to which provisions under sections 143, 144, 147, 148, 307 r/w. 149 of the Indian Penal Code came to be added.

4. The Applicant was released on bail on 14/06/2021. After his release, the provisions of MCOC Act came to be invoked and the Applicant was taken into custody on 16/12/2021.

5. It is pertinent to note that the FIR does not disclose the name of the gang leader – Suraj Pote. The statement of the other injured witnesses was recorded in July, 2021 i.e., almost after a period of three months. The medical certificate reveals that the first informant had sustained deep incised wound on the right cheek. Though the Doctor has certified that the injury was of grievous nature, the said certificate does not prima facie indicate that the same is covered within the meaning of section 320 of the Indian Penal Code. Furthermore, though the first informant had alleged that the co-accused had also assaulted the witness – Naresh, there is no medical evidence to indicate that he was examined by Doctor or that he has sustained any injury.”

5. While releasing co-accused Rahul Mhaske in BA/3099/2023 by an order dated 22nd January, 2024 this Court has observed as under:

6. *Prima facie*, it appears that there is interval of time in lodging of the first information report and recording of the supplementary statement of the first informant in which the applicant came to be named as one of the persons who were present with the alleged gang leader at the time of the alleged occurrence. However, even in the supplementary statement no role has been attributed to the applicant. Though Naresh Navage and Pramod Navage have also stated about the presence of the applicant, at the scene of occurrence, yet no role has been attributed to the applicant. In fact, the first informant in the supplementary statement had stated that the gang leader had exhorted the co-accused Rahul Dighe, who has been released on bail, that they should eliminate the first informant.

7. In the face of the aforesaid nature of the material pressed into service against the applicant, the reasons which weighed with this Court in releasing Rahul Dighe apply with equal force to the claim of the applicant.”

6. The learned APP submitted that the role attributed to the applicant is distinct from the role attributed to the co-accused, who have been released on bail. It was further submitted that the applicant has antecedents.

7. CR No.155/2021 has been registered against the applicant at Meghwadi Police Station. As regards CR No.155/2021 in the order dated 22nd January, 2024 this Court has observed as under:

“8. So far as the allegations of the applicant being the member of the organized crime syndicate, it appears that after instant C.R. No. 97 of 2021 came to be registered with Meghwadi police station another crime bearing C.R. No. 155 of 2021 came to be registered against the applicant and the

Rahul Dighe, who came to be released on bail, for the offences punishable under sections 324, 504, 506(ii), 427, 141, 143, 144, 147, 148 and 149 of Indian Penal Code, 1860 and sections 37(1)(a) read with 135 of Maharashtra Police Act. Prima facie, the question as to whether the applicant, undertook singly or jointly continuing unlawful activity as a member of the organized crime syndicate of which Suraj Pote is alleged to be the gang leader, appears to be a matter for adjudication at the trial.”

8. In the aforesaid view of the matter and having regard the fact that in the FIR the applicant was not named as the person, who was present alongwith assailants though it appears that the first informant had known the applicant from before and, after interval about of one month, the applicant was named as one of the associates of the assailants in the supplementary statement and even in the said supplementary statement, no role apart from being simply present at the alleged time of the occurrence has been attributed to the applicant, I am inclined to hold that the applicant is entitled to the same dispensation as has been given to the co-accused Rahul Dighe and Rahul Mhaske.

9. Hence, the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in C.R. No.97 of 2021 registered with Meghwadi police station, on furnishing a P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

- (iii) The applicant shall mark his presence at Meghwadi police station on the first Monday of every month in between 11.00 am to 1.00 pm for a period of three years or till filing of the charge sheet whichever is earlier.
- (iv) The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.
- (v) The applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.
- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

[N. J. JAMADAR, J.]