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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3651 OF 2023**

TOHID ALAIS BABLU MAJID SHAIKH

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Ganesh Gupta a/w Adv. Sahil Ghorpade a/w Adv. Madan Khansole a/w Adv. Jagrut Patil i/b. G.G. Legal Associates for the applicant.

Mr. Swapnil V. Walve, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : MARCH 27, 2024

P.C. :

1. This is an application for bail in respect of the offence punishable under Sections 143, 147, 148, 149, 307, 324, 387, 120B, 504, 506 read with 34 of the Indian Penal Code (hereafter 'IPC' for short), under Sections 37(1), 135 of the Maharashtra Police Act and under Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereafter 'MCOCA', for short) registered on 05.01.2022 vide FIR bearing C.R. No.0016 of 2022 with Mahatma Phule Chowk Police Station, Kalyan, District Thane.

2. On 07.11.2023 the co-accused Satej @ Bala Suresh Pokal was enlarged on bail by the order passed in Bail

Application No.1582 of 2023. The relevant portion of the order reads thus :-

"2. This is an application for bail in respect of the offence punishable under sections 143, 147, 148, 149, 307, 324, 387, 120B, 504, 506 read with 34 of the Indian Penal Code, 1860, under sections 37(1), 135 of the Maharashtra Police Act and under sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereafter 'MCOCA', for short) registered on 05/01/2022 vide C.R. No. 16 of 2022 with Mahatma Phule Chowk police station, Thane.

The prosecution case in brief is as under:

3. The FIR has been lodged by the original complainant with Mahatma Phule Chowk police station, Kalyan, Thane City, District- Thane inter alia stating therein that he and his family members are residing at Murarbaug, More Chawl, Murbad Road, Kalyan (West) and he is having a shop of sale and repairs and the livelihood of his family is earned on the income of the said shop.

4. It is the case of the original complainant/informant that he knows the accused No. 1- present applicant- Satej @ Bala Suresh Pokal, the accused no. 2- Sachin Khema, the accused no. 3- Nitin Khema, the accused no. 4- Prem Haribhau Chaudhary, the accused no. 5- Tohit @ Bablu Majid Shaikh, and the witness Bhushan Jadhav. The complainant knew that the said witness Bhushan Jadhav has lodged a complaint against the co-accused Sachin Khema at Mahatma Phule Chowk Police Station.

5. It is the case of the original complainant/informant that on 04/01/2022, while the complainant and his friend namely Bhushan Jadhav, Harsh Shah, Chetan Shetty were sitting and drinking liquor, in the night at about 11.00 p.m., the co-accused Nitin Khema and Satej Pokal @ Bala came near the table where they were drinking liquor and the co-accused Nitin Khema allegedly said to Bhushan Jadhav that his brother Sachin Khema (Accused No.1) has told the complainant to withdraw the complaint lodged against Sachin Khema (Accused No.1) and in case, the said complaint is not withdrawn, consequences will follow and then he left. They all had left for their respective homes from Satkar Bar at 11.15 p.m. after the drinking was over.

6. It is the case of the original complainant/informant that on 05.01.2022, in the night at about 2.30 a.m., the co-accused Nitin Khema, Prem Choudhary, present applicant- Satej and Bablu Majid Shaikh had come near the house of the complainant

and threatened as to why he was not picking up the phone of the accused no.1 Sachin Khema and the complainant would have to come to the accused no.1 and to stop helping Bhushan Jadhav. They left after the co- accused Nitin Khema threatened the complainant that if he wanted to continue the business of kites in the premises of Kalyan Railway Station, the complainant would have to pay Rs. 5 lakh to the accused- Sachin Khema. Therefore, the complainant was frightened and had called his friends Chetan Shetty and Shahbaz Mullani. Thereafter, they had discussion and while they were going towards police station for lodging complaint, the co-accused Nitin Khema, Prem Choudhary, present applicant- Satej Pokal, Bablu Majid Shaikh and one unknown co-accused bearing cap, strong built, grey complexion, height approximately 5 x 5 inches arrived. Nitin Khema and Prem Choudhary were having choppers in their hands. At that time, the co-accused Nitin Khema said to the complainant that he would be finished and by saying so and after stabbing the complainant in his stomach with chopper, while he was again giving a blow, the complainant raised his hand for saving himself. The co- accused Prem Choudhary gave a blow with the chopper on the left wrist of complainant. At that time, the witness i.e. the friend of the complainant namely Shahabaz Mullani intercepted for saving the complainant and the co-accused Nitin Khema injured him by giving a blow of chopper on his left hand too. Suddenly, the police vehicle on patrolling arrived and the police chased and nabbed the applicant - Satej Pokal @ Bala. The other four co- accused persons ran away from there. Thereafter, the friends of the complainant Chetan Shetty and the injured Shahabaz Mullani immediately admitted the complainant at Meera Hospital.

7. Learned APP opposed the application by contending that the offence is serious and stringent provisions of MCOC have been invoked. The applicant had to get over sub- section 4 of section 21 of MCOC Act.

8. My attention is invited to the confessional statement recorded of the present applicant. From the statement, it appears that the present applicant was insisting that the dispute with the witness- Amjad (injured witness) should be resolved. It is thereafter that the co-accused Nithin Khema assaulted the victim with a chopper. The role assigned to the present applicant is that he had come on the motorcycle with the co-accused Nithin Khema. Sachin Khema is the gang leader. There are in all 6 accused. The applicant is the accused no.1. So far as the applicant is concerned, the present offence is only offence in common with the gang. The applicant was caught on the spot. There is no overt act attributed to the applicant. The applicant was not in possession of any weapon nor any overt act is

attributed to him. It is submitted by learned counsel for the applicant that the applicant's mother is virtually on deathbed.

9. There is one offence registered against the present applicant which is not common with the gang leader or any of the gang members. The said offence is an independent offence having C.R. No.458 of 2020 for violating the prohibitory orders during the Covid period. Considering the role of the applicant in the present case, in the facts and circumstances of the present case and in view of the materials on record, prima facie, I am of the opinion that the question whether the applicant committed the offence as a member of the organized crime syndicate is debatable which will have to be decided at the time of trial. In my opinion, twin conditions in section 21 stand satisfied."

3. Learned APP opposed the application for bail. My attention is invited to the affidavit. It is submitted that the applicant is a member of the organized crime syndicate.

4. The role of the applicant is similar to that of co-accused - Satej @ Bala Suresh Pokal who has been enlarged on bail. I have perused the commonality chart which is at page 1355 of the paper book. So far as the present applicant is concerned, the present offence is the only offence in common with the gang leader and other members of the organized crime syndicate. The applicant is on a better footing than co-accused - Satej @ Bala Suresh Pokal who is enlarged on bail. In this view of the matter I am inclined to enlarge the applicant on bail on parity with the co-accused. The applicant was arrested on 19.03.2022

and is now in custody for more than two years. So far criminal antecedent is concerned, there is only one offence registered against the applicant which is an independent offence. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Tohid Alais Bablu Majid Shaikh in connection with C.R. No.0016 of 2022 registered with Mahatma Phule Chowk Police Station, Thane 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 applicant is permitted to furnish cash bail surety in the sum of Rs.50,000/- for a period of 6 weeks in lieu of surety.
- (d) The applicant shall attend the Investigating Officer of Mahatma Phule Chowk Police Station, Thane once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m.
- (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 him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(f) On being released on bail, 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.

(g) Except for attending the trial and for the purpose of reporting to the Investigating Officer, the applicant shall not enter the jurisdiction of Mahatma Phule Chowk Police Station, Thane after being released on bail, till the trial concludes.

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

5. The application is disposed of.

(M. S. KARNIK, J.)