

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 137 OF 2024

Akshay Ashok Kanthe

...Applicant

Versus

The State of Maharashtra

...Respondent

SHRIKANT
SHRINIVAS
MALANI

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Date: 2024.06.28
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- Mr. Amrish Salunke a/w Mr. Abhishek Kumar and Mr. Chetan Chauhan, for Applicant.
- Mr. Bapu V. Holambe-Patil, APP for State.
- Mr. Suhas Hemade, ACP, Trombay Division, Mumbai, present.

CORAM : MANISH PITALE, J.

DATE : 28th JUNE, 2024.

P. C. :

1. Heard, Mr. Amrish Salunke, learned counsel for the applicant and Mr. Bapu Holambe-Patil, learned APP for the State.

2. On the last occasion this application was heard for considerable period of time and after considering the contentions raised on behalf of the applicant, the hearing was adjourned on two aspects. Firstly, the injury report pertaining to one of the victims in the incident i.e. Mangesh Hiwale, and secondly, the aspect as to whether the applicant before this Court is an accused person along with the alleged gang leader Shankar Salve in C.R. No.227 of 2024, registered in Mankhurd Police Station.

3. The aforesaid two issues arose in the backdrop of specific submission made on behalf of the applicant that the injury certificate does not

correspond with the overt act alleged against the applicant and that the Maharashtra Control of Organised Crime Act (MCOCA) has been wrongly invoked in the present case.

4. This Court has considered the aforesaid submissions. The injury certificate pertaining to the alleged victim Mangesh Hiwale shows that he suffered two simple injuries on the infra orbital region, on the left hand side of the face by a blunt weapon. A perusal of the statement of the informant, leading to registration of the FIR, shows that the only overt act attributed to the applicant is that he allegedly assaulted the victim Mangesh Hiwale with a wooden plank. The statement of an eye witness shows that according to the said witness, the applicant assaulted Mangesh Hiwale with the wooden plank on his back.

5. The injury report of Mangesh Hiwale *prima facie* does not correlate with the specific overt act alleged against the applicant and to that extent, there is substance in the contention raised on behalf of the applicant that this raises a doubt about the prosecution version.

6. The learned APP has taken instructions from the officer present in Court today, as regards the question as to whether the applicant is a co-accused along with the alleged gang leader Shankar Salve in C.R. No.227 of 2021, registered at Mankhurd Police Station. The papers of the said case are

available in Court. There is nothing to show that the alleged gang leader Shankar Salve is also an accused person in C.R. No.227 of 2021. Therefore, as on today, although the applicant appears to have criminal antecedents, he is arraigned as an accused with alleged gang leader only in the present case. A strong *prima facie* case is made out in favour of the applicant with regard to the non-applicability of MCOCA.

7. The details of the criminal antecedents of the applicant placed before this Court show that apart from the present case, he has been arraigned as an accused in four criminal cases. In one of them bearing C.R. No.12 of 2015, he has been acquitted, while in the pending cases, the offences registered against him include offences under Sections 324, 504 and 506 (2) of the Indian Penal Code, apart from offences under the provisions of the Arms Act.

8. The applicant has remained behind bars since 11th August, 2021, i.e. for about three years. The charges are yet to be framed, while the charge-sheet was filed in the present case, as far back as in the year 2021 itself, in First Information Report No.512 of 2021, registered at Mankhurd Police Station, for the offences under Sections 307, 324, 323, 509, 504, 506(2), 201, 212, 143, 144, 147, 148, 149 of the Indian Penal Code, Sections 4 and 25 of the Arms Act, Sections 37(1)(A) read with 135 of the Maharashtra Police Act and

Sections 3(1)(ii), 3(2), 3(3) and 3(4) of the MCOCA.

9. Having considered the material on record, this Court is of the opinion that a strong *prima facie* case is made out by the applicant in his favour, apart from the fact that he has already remained behind bars for almost three years. The material on record has been appreciated and this Court is of the opinion that the requirements under the MCOCA for granting bail are satisfied by the applicant.

10. In view of the above, the application is allowed in the following terms :

- (A) The applicant shall be released on bail in connection with FIR No.0512 of 2021, registered at Police Station Mankhurd, on furnishing P.R. Bond of ₹ 50,000/- and one or two sureties in the like amount to the satisfaction of the Trial Court.
- (B) The applicant, during the pendency of the trial, shall not enter the jurisdiction of Mankhurd Police Station.
- (C) The applicant upon his release on bail shall forthwith place on record of the trial Court his contact number and address and update the same in case of any change.
- (D) The applicant shall report to Police Station Shivaji Nagar

on first Monday of every month between 10.00 a.m. and 12.00 noon, during the pendency of the trial.

(E) The applicant shall not indulge in any act similar to the one, which has been alleged against him in the present case.

(F) The applicant shall not tamper with the evidence in any manner. He shall not influence the informant, witnesses or any other persons concerned with the case.

11. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled.

12. It is further made clear that the observations made in this order are limited to the question of grant of bail to the applicant and that the Trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

13. The application is disposed of.

(MANISH PITALE, J.)