

Ethape

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 467 OF 2024

Robhin Rajesh Sinha ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

BAIL APPLICATION NO. 654 OF 2024

Chetan Harprakash Patel ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

BAIL APPLICATION NO. 1433 OF 2024

Sunil David Gajanan Narvekar ...Applicant

Versus

The State of Maharashtra ...Respondent

ESTIMATE
DRAFTING
AND
REVISIONS
DATE: 2024.07.19
10:25:51 +0530

Mr. A. A. Kumbhakoni, Senior Advocate a/w Mr. Rushikesh Kale, Chaitanya Pendse, Manoj Badgujar, Rajendra Bamane, Advocate for the Applicant in BA/467/2024.

Mr. Niranjan Mundargi a/w Ms. Keral Mehta i/by Mr. Prathamesh Naik and Mr. Ninad More, APP for the Applicant in BA/1433/2024.

Mr. S. T. Pandey a/w Anima Mishra, Anuj Singh i/by SGB Law for the Applicant in BA/654/2024.

Mr. A. A. Naik, APP for Respondent-State.

ASI Shri Ganesh K. Bhosale Crime Branch, Thane City, Present.

CORAM: N. J. JAMADAR, J.

Reserved On: 3rd JULY, 2024

Pronounced On: 18th JULY 2024

ORDER:-

1. The applicants have preferred these applications to enlarge them on bail in Special Case (MCOCA) No.559 of 2020 arising out of CR No.377 of 2020 registered with Mahatma Phule Chowk Police Station, Kalyan, for the offences punishable under Sections 120B, 302 and 506(2) read with Section 34 of the Indian Penal Code, 1860 (“the Penal Code”), Sections 3, 25 and 27 of the Arms Act, 1959, Section 37(1) read Section 135 of the Maharashtra Police Act, 1951 and Sections 3(1)(i), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (“the MCOC Act”).

2. At the outset, it is necessary to note that in Bail Application No.132 of 2023 (Amjad Yusuf Pathan Vs. State of Maharashtra) and connected matters arising out of the same crime, this Court had already considered the prosecution case, the role of the applicant/accused in the alleged offences and the material pressed into service against the applicants therein, and the situation which emerged as regards the organized crime syndicate and, resultantly, the entitlement of those applicants for bail. I, therefore, deem it appropriate to briefly advert to the prosecution case as the learned Counsel for the accused as well as the learned APP made an

endeavour to bank upon the said order, *albeit* to canvass their respective contentions.

Prosecution case and background facts:

3. Briefly stated the gravamen of indictment against the applicant and the co-accused is that on 31st July, 2020 between 9.45 to 10.00 pm., near the office of Jignesh Thakkar @ Muniya (the deceased), Dharmesh (A1) and Jaypal alias Japan Bhansingh Dulgaj (A2) fired at the deceased by means of the pistols, they were armed with. When Abushahma Shabbir Ansari (the first informant) and his associates attempted to rush to the rescue of the deceased, Dharmesh (A1) and Jaypal (A2) pointed the pistols towards them and threatened to shoot, if anybody intervened. After assaulting the deceased, Dharmesh (A1) and Jaypal (A2) accompanied by their two associates Vivek @ Vicky Janak Paneri (A8) and Sunil @ David Narvekar (A7), the applicant in BA/1433/2024, fled away.

4. During the course of investigation, it transpired that Dharmesh (A1) was the leader of the Organized Crime Syndicate. The applicants herein and the rest of the accused were the members of the said syndicate. The deceased was killed pursuant to a conspiracy hatched at the office of Chetan Patel (A5), the applicant in BA/654/2024. The conspiracy was again hatched on 30th July 2020

between 2:00 pm to 3:00 pm in the premises of Shivshakti Building where Chetan Patel (A5) and other co-accused including assailants Dharmesh (A1) and Jaypal (A2) were present. The prosecution alleges a couple of days prior to the occurrence, the deceased had a quarrel with Chetan Patel (A5) for having invited a person to celebrate the birthday of Dharmesh (A1), as the said person was on inimical terms with the deceased.

Role of the Applicants:

5. The role of the applicants, as emerged from the statements of the first informant and witnesses, the discoveries made by the applicants and the co-accused, the confessional statements of Chetan Patel (A5) and two co-accused and as articulated in the affidavit-in-reply filed on behalf of the respondent, is that the applicants were the members of the organized crime syndicate led by Dharmesh (A1) and the applicants alongwith Dharmesh (A1) had hatched the conspiracy to eliminate the deceased. In pursuance of the said conspiracy, Dharmesh (A1) and Jaypal (A2) were to fire at the deceased. It is alleged that the fire arms were procured and supplied by Robhin Sinha (A9), the applicant in BA/467/2024. Chetan Patel (A5) was tasked with look out duty when the assailants assaulted the deceased. Chetan Patel (A5) was also a confederate in the conspiracy

to kill the deceased. Sunil @ David Narvekar (A7) was at the scene of occurrence alongwith Dharmesh (A1), Jaypal (A2) and Vivek @ Vicky Janak Paneri (A8). Sunil Narvekar (A7) allegedly accompanied the assailants to the scene of occurrence, left alongwith the assailants after the assault and was with the gang leader throughout.

Submissions:

6. In the backdrop of the aforesaid role attributed to the applicants, the submissions canvassed on behalf of the respective applicants deserve to be noted.

7. Mr.Kumbhakoni, the learned Senior Advocate for the applicant Robhin Rajesh Sinha (A9), submitted that the applicant Robhin Sinha (A9) was nowhere in the frame till the third disclosure statement of Dharmesh (A1) came to be recorded. The allegations that the applicant had supplied the weapons of offence is not borne out by any material. The disclosure statement made by Robhin Sinha (A9) is bereft of any evidentiary value as nothing can be said to have been discovered pursuant to the said disclosure statement. The disclosure statement of Dharmesh (A1) that the applicant Robhin Sinha (A9) had supplied the weapons of offence also loses significance. There is material to show that the relations between applicant Robhin Sinha (A9) and Dharmesh (A1) had taken inimical proportion since long

prior to occurrence. The allegations that the applicant was the member of the alleged organized crime syndicate led by Dharmesh (A1) falls flat if considered in the light of the statements of the prosecution witnesses. Instead, it *prima facie* emerges that Robhin Sinha (A9) and Dharmesh (A1) had fallen apart and that was a cause for Dharmesh (A1) to falsely rope in Robhin Sinha (A9). In any event, according to Mr.Kumbhkoni, there is not a shred of material to indicate that the applicant was a confederate in the conspiracy or was present at the time of alleged occurrence in the vicinity of the scene of occurrence or otherwise in touch with any of the co-accused by any mode. Therefore, the applicant deserves the exercise of discretion.

8. Mr.Naik, the learned APP for the Respondent-State submitted that, there is overwhelming material to show that Robhin Sinha (A9) had supplied the weapon. Inviting the attention of the Court to the statements of the witnesses, especially witness Nos.34, 37 and 41, the learned APP would urge that nexus between the applicant Robhin Sinha (A9) and the organized crime syndicate led by Dharmesh (A1), can be said to have been established. Having regard to the nature of the occurrence and the well-planed manner in which the deceased

was killed, according to Mr.Naik, the learned APP, the supplier of deadly weapons cannot be released on bail.

9. Mr.Pandey, the learned Counsel for the applicant, Chetan H. Patel (A5), submitted that the material on record does not indicate that Chetan Patel (A5) was present at the time of alleged occurrence. An endeavour was made by Mr.Pandey to draw home the point that Chetan Patel (A5) is similarly circumstanced like Dhanraj @ Munna S/o. Nitin Shah (A4), who has been released on bail. The confessional statement of Chetan Patel (A5) does not advance the cause of the prosecution as it nowhere indicated that Chetan Patel (A5) was a confederate in the conspiracy. The only antecedent attributed to Chetan Patel (A5) is the NC report which was lodged by the deceased against Chetan Patel (A5) in respect of the incident which had occurred on 20th July 2020 in which, in fact, the deceased had assaulted Chetan Patel (A5). The recovery of knife attributed to Chetan Patel (A5) is of no assistance to the prosecution as it is nobody's case that the deceased was assaulted by means of knife or even otherwise the knife was brandished by any of the assailants while assaulting the deceased. Chetan Patel (A5) has been roped in on account of the quarrel which Chetan Patel (A5) had with the deceased a couple of the days prior to the alleged occurrence. Thus,

neither the charge under the Indian Penal Code nor under MCOC Act, can be said to have been prima facie made out against the applicant.

10. Mr. Naik, the learned APP countered by canvassing a submission that it was at the instance and instigation of Chetan Patel (A5), the deceased was killed. Placing reliance on the statements of witnesses, who have consistently stated about the quarrel between Chetan Patel (A5) and deceased, a couple of days prior to the occurrence, Mr.Naik submitted that Chetan Patel (A5) was a key conspirator. Chetan Patel (A5) was present in both the meetings where the conspiracy was allegedly hatched. Chetan Patel (A5) had a strong motive to eliminate the deceased. Therefore, Chetan Patel (A5) does not deserve to be enlarged on bail.

11. Mr. Mundargi, the learned Counsel for the applicant, Sunil @ @ David Narvekar (A7) in Bail Application No.1433 of 2024, submitted that though the prosecution alleges that the applicant was the fourth person who accompanied Dharmesh (A1), Jaypal (A2) and Vivek Paneri (A8) at the time of occurrence, yet there is no credible material in support of the said allegation. Reliance on the confessional statements of co-accused especially Vivek Paneri (A8) was stated to be misplaced. The identification of the applicant Sunil Narvekar (A7) in the Test Identification Parade by the witnesses was

fraught with infirmities as the witnesses have simply stated that they identified the applicant/accused. However, neither the witnesses have stated about the cause for the identification with reference to the specific role to the applicant nor the Investigating Officer had recorded the supplementary statements of those witnesses. An endeavour was made by Mr.Mundargi to urge that statements of witnesses were recorded post-arrest of the applicant, to bolster up the prosecution case.

12. Mr. Naik, the learned APP stoutly resisted the submission on behalf of the applicant Sunil @ David Narvekar (A7). It was urged with a degree of vehemence that the role of the applicant Sunil @ David Narvekar (A7) is even more grave than that of Vivek Paneri (A8), whose application for bail came to be rejected. It was submitted that the statements of witnesses indicate that Sunil @ David Narvekar (A7) was with the gang leader since the evening of the occurrence till they were apprehended together. The role of Sunil @ David Narvekar (A7) is also borne out by the confessional statement of the co-accused and the statements of the witnesses, who have stated that the applicant Sunil Narvekar (A7) had called co-accused and informed them about the assault on the deceased. Sunil Narvekar (A7) was identified in the Test Identified Parade. One of the

witnesses was threatened by Sunil Narvekar (A7) as the said witness had identified the applicant as one of the two associates, who had accompanied the assailants Dharmesh (A1) and Jaypal (A2). Therefore, the release of the applicant Sunil Narvekar (A7) on bail poses a grave risk to the safety of the witnesses.

13. Before considering the aforesaid submissions, qua each of the applicants, it may be necessary to note a common submission canvassed on behalf of the applicants. Though a number of crimes were registered against Dharmesh (A1), the gang leader, and the prosecution alleges that the applicants were the members of the organized crime syndicate led by Dharmesh (A1), there was no commonality of the offences registered against each of the applicants, on the one part, and Dharmesh (A1), on the other part.

14. The prosecution alleged that two crimes were registered against Robhin Sinha (A9), i.e. CR No.2279 of 2009 at Amboli Police Station, Mumbai for offences punishable under Sections 354, 323, 324, 504 and 506(2) of the Penal Code, 1860 and C.R. No.32 of 2018 at Kalachowki Police Station for offences punishable under Sections 464, 465, 467, 468, 471, 406, 120(B) of the Penal Code, 1860. Mr.Kumbhakoni submitted that in the latter crime i.e. C.R. No.32 of 2018, C-Summary has been filed. The trial arising out of former

crime i.e. C.R. No. 2279 of 2009 is *sub-judice*. Robhin Sinha (A9) is the sole accused in the said crime. Conversely, in none of the crimes registered against Dharmesh (A1), has Robhin Sinha (A9) been impleaded.

15. As regards Chetan Patel (A5), apart from the subject crime, N.C. No. 463 of 2020, for the offences punishable under Sections 323 and 504 of the Indian Penal Code has been registered at Bajarpeth Police Station, Kalyan in respect of the alleged incident dated 28th July 2020 between Chetan Patel (A5) and the deceased, which is stated to be the cause for the assault on the deceased.

16. Two crimes are shown against Sunil @ David Narvekar (A7). In C.R. No.135 of 2018 resulting in Sessions Case No.114 of 2012, Sunil @ David Narvekar (A7) is shown to have been convicted for the offences punishable under Sections 399, 402 of the IPC and sentenced to suffer one year's imprisonment and fine of Rs.1,000/-. Another crime i.e. C.R., No. 322 of 2008 was registered against the Sunil Narvekar (A7) with Wakola Police Station, Mumbai for offences punishable under Section 324 read with 34 of the IPC.

17. Evidently, none of the applicants are shown as co-accused in any of the crimes registered against Dharmesh (A1). It was thus submitted that the applicants cannot be arraigned as the members of

the organized crime syndicate led by Dharmesh (A1). An identical submission was canvassed on behalf of the applicants in BA/132/2023 and the connected applications, (of the co-accused).

The said submission was appreciated as under:

“22. It may also be expedient to immediately notice the ingredients of the offence of organized crime. In the case of *Zakir Abdul Mirajkar vs. State of Maharashtra*¹ the Supreme Court, after analysing the definitions of organized crime (Section 2(1)(e), organized crime syndicate (Section 2(1)(f)) and continuing unlawful activity (Section 2(1)(d)) illuminatingly postulated the essential elements of the “organized crime” as under:

“17. The expression ‘organized crime’ is defined with reference to a continuing unlawful activity. The definition is exhaustive since it is prefaced by the word ‘means’. The ingredients of an organized crime are:

- a. The existence of a continuing unlawful activity;
- b. Engagement in the above activity by an individual;
- c. The individual may be acting singly or jointly either as a member of an organized crime syndicate or on behalf of such a syndicate;
- d. The use of violence or its threat or intimation or coercion or other unlawful means; and
- e. The object being to gain pecuniary benefits or undue economic or other advantage either for the person undertaking the activity or any other person or for promoting insurgency.

18. The above definition of organized crime, as its elements indicate, incorporates two other concepts namely, a continuing unlawful activity and an organized crime syndicate. Hence, it becomes necessary to understand the ambit of both those expressions. The ingredients of a continuing unlawful activity are:

- a. The activity must be prohibited by law for the time being in force;
- b. The activity must be a cognizable act punishable with imprisonment of three years or more;
- c. The activity may be undertaken either singly or jointly as a member of an organized crime syndicate or on behalf of such a syndicate.
- d. More than one charge-sheet should have been filed in respect of the activity before a competent court within the preceding period of then years; and

1 2022 ALL MR (Cri) 3798 (S.C.).

e. The court should have taken cognizance of the offence.

19. The elements of the definition of 'organized crime syndicate' are:

- a. A group of two or more persons;
- b. Who act singly or collectively, as a syndicate or gang; and
- c. Indulge in activities of organized crime.

20. Both Section 2(1)(d) while defining 'continuing unlawful activity' and Section 2(1)(e) while defining 'organized crime' contain the expression 'as a member of an organized crime syndicate or on behalf of such syndicate, Section 2(1)(f) refers to 'activities of organized crime'.

27. Suffice to note that it is not the requirement of law that one or more charge-sheets for the offences, which entail punishment for more than three years, ought to have been filed against each of the accused. The requirement of more than one charge-sheet is in respect of the organized crime syndicate and not qua each accused, who is alleged to be a member of organized crime syndicate.

28. In the case of ***Govind Sakharam Ubhe vs State of Maharashtra***² it was enunciated as under:

"37. Charge is in respect of unlawful activities of the organized crime syndicate. Therefore, if within a period of preceding ten years, one charge-sheet has been filed in respect of organized crime committed by the members of a particular crime syndicate, the said charge-sheet can be taken against a member of the said crime syndicate for the purpose of application of the MCOCA against him even if he is involved in one case. The organized crime committed by him will be a part of the continuing unlawful activity of the organized crime syndicate. What is important is the nexus or the link of the person with organized crime syndicate. The link with the 'organized crime syndicate' is the crux of the term 'continuing unlawful activity'. If this link is not established, that person cannot be roped in."

(emphasis supplied)

29. In the case of ***Zakir Mirajkar*** (supra) the Supreme Court approved the aforesaid enunciation and observed that it is settled law that more than one charge-sheet is required to be filed in respect of the organized crime syndicate and not in respect of each person who is alleged to be a member of such a syndicate.

30. Nonetheless, there should be *prima facie* material to indicate that the offences were committed either singly or jointly as a member of an organized crime syndicate. In the case of ***Govind Ubhe*** (supra) the existence of nexus with organized crime syndicate was emphasized by observing in clear and explicit terms that what is important is the nexus or the link of the person with organized crime syndicate and if this link is not established, that person cannot be roped in."

18. On the aforesaid touchstone, the submissions canvassed on behalf of each of the applicants deserve to be appreciated.

Robhin Sinha (A9)

19. Robin Sinha (A9) is sought to be roped in on the basis of two disclosure statements, primarily. First, the disclosure statement made by Dharmesh (A1) on 18th August 2020 leading to the recovery of the pistol. In the said statement, Dharmesh (A1) disclosed that the applicant had supplied the pistol and few bullets to him as well as Jaypal (A2). Second, the disclosure statement made by the applicant himself to point out the office premises where he had allegedly kept five pistols and cartridges, delivered to him by Amjad Pathan (A3).

20. The disclosure statement made by the applicant Robhin Sinha (A9) does not appear to be of much assistance to the prosecution. It does not appear that any fact was discovered pursuant to the said disclosure statement made by the applicant. The memorandum of disclosure statement indicates that the applicant had volunteered to point out the place where he had kept arms and ammunition. The panchnama drawn at the said place explicitly records that there was substantial structural change at the said premises and nothing could be recovered. In this backdrop, it is debatable whether the disclosure

statement allegedly made by Robhin Sinha (A9) is admissible under Section 27 of the Evidence Act. At any rate, no fact can be said to have been discovered consequent to the disclosure statement made by the applicant Robhin Sinha (A9).

21. The utility of the disclosure statement made by the Dharmesh (A1) qua Robhin Sinha (A9) also appears contentious. It is trite that a disclosure statement made by one accused implicating the co-accused is not a legal evidence qua a non-maker co-accused. It is not the case that Dharmesh (A1) had made a confessional statement under Section 18 of the MCOC Act. Thus, the prosecution would be required to surmount the challenge of admissibility of the disclosure statement made by the Dharmesh (A1) against Robhin Sinha (A9).

22. Though Mr.Kumbhakoni made an endeavour to urge that Dharmesh (A1) do not immediately name Robin (A9) as the supplier of the arms and ammunition and on account of the strained relations between Dharmesh (A1) and Robin Sinha (A9), it appeared to be a case of wrecking vengeance against Robin Sinha (A9), I do not deem it appropriate to delve into this aspect of the matter at this stage. It would be suffice to note that the disclosure statement of Dharmesh (A1) will have to pass the muster of admissibility qua Robin Sinha (A9), the co-accused.

23. The disclosure statements of the rest of the co-accused Dhanraj Shah (A4) Chetan Patel (A5) and Amjad Pathan (A3) implicating the applicant as a member of organized crime syndicate led by Dharmesh (A1) also suffer from the same infirmities.

24. The prosecution has made an endeavour to bank upon the statements of witnesses to draw home the point that Robhin Sinha (A9) was an active member of the organized crime syndicate. Special emphasis was laid on the statement of witness No.37, who has stated about the transaction of Rs.89 lakhs involving Robin Sinha (A9) and Dharmesh (A1). I have perused the statement of witness No.37. Prima facie, it appears that there was a commercial transaction between Robhin Sinha (A9) and the said witness. They were jointly developing a property. In connection with the said transaction, Robhin Sinha (A9) had allegedly delivered a sum of Rs.89 lakhs in the presence of Dharmesh (A1). Witness No.37 also adverts to the fact that Dharmesh (A1) suspected that Robhin Sinha (A9) had collected money from the witness No.34 and, thus, there was a dispute between them.

25. I have also perused the statements of witnesses No.34, 36, 38 and 41. The witnesses have stated that they were aware of the proximity between Dharmesh (A1) and Robhin Sinha (A9), they had

seen Dharmesh (A1) with Robhin Sinha (A9) and that, later on, there were disputes between Dharmesh (A1) and Robhin (A9).

26. I find it rather difficult to accede to the submission on behalf of the prosecution that the aforesaid statements prima facie indicate that Robhin Sinha (A9) was a member of the organized crime syndicate led by Mr.Dharmesh (A1). On the contrary, these statements, if properly construed, prima facie indicate that the relations between Dharmesh (A1) and Robin (A9) were strained, boarding on enmity.

27. That leaves the confessional statements of Chetan Patel (A5) recorded under Section 18 of the MCOC Act, wherein the applicant Robhin Sinha (A9) has been named alongwith other co-accused as a member of the gang led by Dharmesh (A1). It would be contextually relevant to note that the said portion of the confessional statement was immediately retracted by Chetan Patel (A5) when he was produced before the Magistrate for verification of the confessional statement. Undoubtedly, the value of retracted confessional statement cannot be evaluated at this stage. Nonetheless, in the absence of any other material to establish the nexus of Robin (A9) with the organized crime syndicate, a retracted confessional statement of Chetan Patel (A5) would be too tenuous a circumstance

to hold that Robhin (A9) was a member of the organized crime syndicate.

28. In this background, the fact that Robhin (A9) has not been implicated in any of the crimes registered against Dharmesh (A1) or any other co-accused assumes significance.

29. I am, therefore, impelled to hold that, prima facie Robhin (A9) may not be guilty of the offences for which he has been arraigned. Since only one crime has been registered against the applicant Robin (A9) and that too in the distant past, the Court may draw an inference that the applicant Robhin (A9) may not indulge in identical offences, if released on bail. I am, therefore, inclined to exercise discretion in favour of Robhin Sinha (A9).

Chetan Patel (A5)

30. The prosecution does not allege that Chetan Patel (A5) was one of the two associates, who accompanied the assailants Dharmesh (A1) and Jaypal (A2). That role has been attributed to Vicky Paneri (A8) and Sunil @ David Narvekar (A7). The role attributed to Chetan Patel (A5) is that of keeping a watch on a neighbouring road leading to the scene of occurrence. Chetan Patel (A5) has been attributed the role as accessory before and after the alleged act, which is, by and

large, similar to that of Dhanraj Shah (A4). Like Dhanraj (A4), the applicant Chetan Patel (A5) was also allegedly present on 30th July 2020 between 02:00 pm to 03:00 pm in the premises at Shivshakti Building where the conspiracy to eliminate the deceased was allegedly hatched.

31. It may be apposite to note the manner in which the aforesaid material qua Dhanraj (A4) was delved into by this Court in the order dated 21st February 2024. The observations in paragraph Nos.41 and 42 bear upon the claim of the applicant Chetan Patel (A5) as well. They read as under:-

“**41.** In the circumstances, the weight to be given to the claim of witness No.11 who allegedly overheard the conversation would be a matter for adjudication at trial. Undoubtedly, conspiracies are hatched in secrecy and rarely there is a direct evidence. However, in the facts of the case, qua the applicant Pravin (A6) and Dhanraj (A4) the material pressed into service in support of the charge of conspiracy, *prima facie*, appears contestible.

42. The role attributed to Dhanraj (A4) in the alleged conspiracy of keeping a watch while the assailants fired bullets at the deceased, also appears contestible as the statement of witness No.13 indicates that at the time of the alleged occurrence Dhanraj (A4) was with the said witness at a different place. Witness No.13 and Dhanraj (A4) met at about 9.30 pm. and were standing in front of the office of Shah Brothers, Jhunzarrao Market at about 10.15 pm. They had seen the wife and son of the deceased passing from in front of them. After about 10 minutes the brother of the deceased called Dhanraj (A4) and threatened Dhanraj with dire consequences as Dharmesh (A1), the brother of Dhanraj (A4), had fired at the deceased. The statement of witness No.12 thus *prima facie* runs counter to the role attributed to Dhanraj (A4) in the alleged occurrence.”

32. With regard to the confessional statement of Chetan Patel (A5), apart from the fact that Chetan Patel (A5) had immediately retracted

the said confessional statement, it is necessary to note as to what is the substance of the said confessional statement. Chetan Patel (A5) stated that on 30th July 2020 at the main gate of Shivshakti Building in the presence of Pravin (A6), Amjad (A3), Jaypal (A2), Dhanraj (A4) and others, Dharmesh (A1) had inquired with him as to why the deceased and his associates had assaulted Chetan Patel (A5), and thereupon he had replied that he was assaulted for bringing a friend to celebrate the birthday of Dharmesh (A1). The confessional statement of Chetan (A5) stops at that qua the alleged conspiracy hatched in the premises of Shivshakti Building. With regard to the occurrence dated 31st July 2020, Chetan Patel (A5) stated that he had come in the front of the office of Dharmesh (A1). The other accused came thereat and Dharmesh (A1), Jaypal (A2), David (A7) and Vicky (A8) went in the lane and came back after a while and, thereafter, they went away in the vehicles.

33. The aforesaid confessional statement is required to be read in the backdrop of the material to indicate that on 28th July 2020, the deceased had allegedly abused and assaulted Chetan Patel (A5). There is material to indicate that the applicant Chetan Patel (A5) had allegedly stated that Dharmesh (A1) would deal with the deceased and thereupon the later dared Chetan (A5) to ask his Bhai

[Dharmesh (A1)] to do whatever he could do. As noted above, in respect of the said incident two cross NCs were registered.

34. Can a prima facie inference be drawn on the basis of the aforesaid material that the applicant Chetan Patel (A5) was also a confederate in the conspiracy, is the moot question. For an answer, recourse is required to be made to the confessional statements of Chetan Patel (A5) and Vicky Paneri (A8). Chetan Patel (A5) does not refer to any meeting in his office where the conspiracy was allegedly first hatched. Vicky Paneri (8), however, referred to a meeting in the office of Chetan Patel (A5) where the co-accused Dharmesh (A1), Dhanraj (A4) Barkat Pathan (A10) and Amjad Pathan (A3) were present. When Chetan Patel (A5) related the incident of assault by the deceased prior to a couple of days, Dharmesh (A1) allegedly stated that the deceased was required to be eliminated and then the plan was hatched.

35. Thus the situation which emerges is that Dhanraj (A4) and Amjad Pathan (A3), who have been released on bail, were also allegedly present in the said meeting. The role attributed to Chetan Patel (A5) does not appear to be materially distinct from the role attributed to co-accused Dhanraj (A4). One additional circumstance which could be arrayed against Chetan Patel (A5) is that he had a

more pronounced motive as the deceased had abused and assaulted him. In my view, that is not such an incriminating circumstance as to deny parity to Chetan Patel (A5). It is imperative to note that Vicky Panari (A8) has also stated about the grievance made by Jaypal (A2) with Dharmesh (A1) about the behaviour of the deceased on the birthday of Dharmesh (A1). I, therefore, find substance in the submission on behalf of the applicant Chetan Patel (A5) that he is entitled to the same dispensation as has been extended to Dhanraj (A4) and Amjad Pathan (A3).

36. The fact that till the NC came to be registered against Chetan Patel (A5), he had a clean slate cannot be lost sight of. That factor assumes salience to prima facie determine as to whether Chetan Patel (A5) can be roped in as a member of the organized crime syndicate.

37. For the foregoing reasons, I am inclined to hold that an inference becomes justifiable that Chetan Patel (A5) may not be guilty of the offences for which he has been arraigned. The fact that the applicant Chetan Patel (A5) had no antecedent also justifies a further inference that he is not likely to commit identical offences, if enlarged on bail. Thus, Chetan Patel (A5) deserves to be released on bail.

Sunil @ David Narvekar (A7)

38. Mr. Mundargi would urge that there is significant difference in the quality of material pressed into service against Vivek Paneri (A8), whose application for bail was rejected, and Sunil Narvekar (A7). The evidence of identification of Sunil Narvekar (A7) as the fourth person, who accompanied Dharmesh (A1) and Jaypal (A2) is inherently weak. Since there is no commonality in the offences registered against Sunil Narvekar (A7) and Dharmesh (A1), even the charge of being a member of organized crime syndicate falls through, urged Mr.Mundargi.

39. I find it difficult to agree with aforesaid submissions. In my view, the role attributed to Vivek Paneri (A8) and Sunil Narvekar (A7) is rather indistinguishable. Both had accompanied Dharmesh (A1) to the scene of occurrence. There are statements of eye witnesses, who had seen Vivek Paneri (A8) and Sunil @ David Narvekar (A7) with the assailants. They have identified both Vivek (A8) and Sunil (A7).

40. Moreover, there are statements of witnesses, who have categorically stated that the applicant Sunil (A7) had called co-accused Dhanraj (A4) and informed him that they had killed the deceased. Witness No.13 stated that immediately after the

occurrence, the applicant called co-accused Dhanraj (A4) and told him that they had killed the deceased. When the said witness and Dhanraj (A4) reached Mira Road, the applicant and Vicky Paneri (A8) were in the Mahindara XUV alongwith Dharmesh (A1) and Jaypal (A2).

41. Witness No.17 stated that on 31st July 2020 at about 04:30 pm., Dharmesh (A1), Jaypal (A2) Vicky (A8) and the applicant Sunil @ David had left his office together. Post occurrence also, the applicant was with the assailants. Witness No.28 stated that on the night of occurrence at about 11:00 pm., he had received a call from applicant Sunil's number and Dharmesh (A1) apprised him that they had killed the deceased. Likewise, in the confessional statement Pravin Sanklesha (A6) stated that at about 10:30 pm., Dharmesh (A1) had called him from the mobile phone of the applicant and informed him that they had killed the deceased. In addition, the confessional statement of Vivek Paneri (A8) prima facie implicates the applicant Sunil @ David (A7) squarely.

42. The situation which thus obtains is that there is material to show that the applicant was with the assailants throughout. His involvement has been stated to, by the eye witnesses, the co-accused

and the witnesses, who have stated about the prelude and sequel to the occurrence.

43. In the aforesaid backdrop, it would be hazardous to draw an inference that Sunil (A7) is not guilty of the offences for which has been arraigned. The nexus between the applicant and the organized crime syndicate is prima facie established. In the backdrop of the material on record which reflects upon propensity of Sunil @ David (A7) to commit the offences, the Court does not have the assurance to record a finding that the applicant may not indulge in identical offences, if released on bail. I am, therefore, not inclined to grant bail to Sunil @ David Narvekar (A7).

44. Hence, the following order:

: O R D E R :

- (i)** Bail Application No.1433 of 2024 stands rejected.
- (ii)** Bail Application Nos.467 of 2024 and 654/2024 stand allowed.
- (iii)** Robhin Rajesh Sinha; the applicant in BA/467/2024 and Chetan Harprakash Patel; the applicant in BA/654/2024, be released on bail in CR No.377 of 2020 registered with Mahatma Phule Chowk Police Station, Kalyan, on furnishing a P.R. Bond of Rs.50,000/- with one or more sureties in the like amount, each.

(iv) The applicants shall mark their presence at Mahatma Phule Chowk Police Station, Kalyan, on the first Monday of every month between 10.00 am. to 12.00 noon till the conclusion of the trial.

(v) The applicants shall not enter the limits of Mumbai, Thane and Navi Mumbai Districts for the period of three years or till the conclusion of the trial, whichever is earlier, except for the purpose of attending the proceedings before the Court and marking their presence at the Police Station.

(vi) The applicants shall not tamper with the prosecution evidence. 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.

(vii) On being released on bail, the applicants shall furnish their contact numbers and residential address to the investigating officer and shall keep him updated, in case there is any change.

(viii) The applicants shall regularly attend the proceedings before the jurisdictional Court.

(ix) 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.

[N. J. JAMADAR, J.]