

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

BAIL APPLICATION NO.1568 OF 2024

Digitally signed
by SATISH
RAMCHANDRA
SANGAR
Date:
2024.10.04
18:44:16
+0530

Abhishek @ Ankur Tarkeshwar Singh

Age : 33 Years, Occupation : Nil,
Residing at : 18 Lharadih, Kapsethi,
Varanasi, Uttar Pradesh : 221403
[At present in Judicial Custody and
lodged at Thane Central Prison]

**...Applicant
(Original Accused No.2)**

Versus

The State of Maharashtra

(At the instance of Senior Inspector
of Police, Virar Police Station,
vide C.R.No.232 of 2022).

...Respondent

Mr.Rahul Arote:-	Advocate for Applicant.
Mr.Ashok Gawai:-	APP for Respondent–State.

**CORAM : S. M. MODAK, J.
DATE : 1st OCTOBER 2024**

P.C. :-

1. Heard learned Advocate Shri.Rahul Arote for the Applicant who
is Accused No.2 and learned APP Shri.Ashok Gawai.

2. He is charge sheeted for committing a murder of one Samarjeet alias Samay Vikramsing Chauhan along with others. The deceased was a resident of village : Fulpada, Virar. Considering his construction business, he has clout in that area. The Accused – Rahul Dubey is engaged in the construction business. He has hatched a conspiracy to eliminate the deceased Samay. That is why, he has taken the assistance of life convict – Subhashsingh Thakur. He is undergoing the sentence at Fatehgarh Jail, Utter Pradesh. That is how, the deceased was murdered on 26th February 2022 at about 13.30 hours. The Accused Rahul Sharma and Manish Singh fired on him.

3. It is the prosecution case, that the present Applicant has also helped the assailants in doing reiki. The present Applicant is one of the persons who was in touch with life convict Subhashsingh Thakur. From Utter Pradesh, he came to Virar and stayed at two places.

4. A charge-sheet is submitted under Sections 302, 201, 212, 120-B of the Indian Penal Code, 1860 (“**IPC**”), under Sections 3, 25, 27 of the Arms Act, 1959 (“**Arms Act**”) and under Sections 3(1)(i), 3(1)(ii), 3(2), 3(3),3(4) of the Maharashtra Control of Organised Crime Act, 1999 (“**MCOC Act**”). His Bail Application was rejected by the Court of

Additional Sessions Judge – Thane on 22nd February 2024¹.

5. The following materials are referred against the Applicant:-

- (a) The confessional statement of Accused No.1–Rahul Sharma.
- (b) The confessional statement of the Accused No.10–Arjun Rajendra Singh.
- (c) Statement of one witness (name hidden) who has handed over the ATM Card to the Accused No.1–Rahul Sharma at the instance of the present Applicant².
- (d) The information collected from the Railway giving the details of ticket. Along with others, the present Applicant travelled on 16th February 2022 by Patana Express to CST³.
- e) The seizure of his cloths⁴.
- (f) The seizure of sandal on 3rd April 2022⁵.
- (g) Panchnama about seizure of C.C.T.V.,footages at Kalyan Railway Station. The panchnama is dated 10th April 2022.
- (h) The statement of witness recorded on 10th April 2022:-

This witness has made an arrangement of residence of four

1 Order below Exh.122 in Special Case (MCOC) No.518 of 2022 (Page No.1258)

2 Page No.456

3 Chhatrapati Shivaji Terminus

4 Page No.142

5 Page No.150

persons in Room No.111, Sai Shanti Construction Building,
Vikas Nagari – 1, Fulpada, Virar (East)⁶.

(i) The statement of witness⁷:-

He used to look after the water-supply of that building. The occupants of Room No.11 have told him about water shortage and he has made the necessary arrangement. He has identified the present Applicant as one of the occupants. He has identified him when Police have shown him the photo from the mobile.

(j) The statement of witness dated 2nd April 2022⁸:-

He has studied in the school along with this Applicant. At the instance of the present Applicant, this witness has handed over this ATM Card to the Accused No.1 – Rahul Sharma in the month of October-2020.

(k) The statement of one lady who used to supply tiffin:-

From 21st February 2022 to 25th February 2022, she has supplied the tiffin to the occupants of the flat on the request of the Accused-Rajkumar.

6. Whereas, according to learned Advocate Shri.Arte, the above

6 Page No.472

7 Page No.459

8 Page No.456

said materials are not sufficient to continue the detention. He made following submissions:-

- (a) The confessional statements are retracted by both the Accused before the Magistrate, when they were produced.
- (b) The seizure of shirt and chappal can't be said to be an incriminating material.
- (c) The C.C.T.V., footages at Kalyan show the persons who have masked their faces. The identity could not be established.
- (d) Some railway ticket is not sufficient.
- (e) Even though, there are statements, however, it can't be said that the present Applicant is one of the occupants of Flat No.111. There are no other statements or C.C.T.V., footages showing the presence of the Applicant in and around the spot either earlier to the commission of the offence or at the time of commission of the offence.
- (f) He invited my attention to the following bail orders:-
 - (i) Bail granted to co-accused Ashish Vijay Shukla by this Court on 4th September 2023.
 - (ii) Bail granted by this Court to co-accused Ashok

Shitalaprasad Sharma and Akash Ashok Sharma on 7th October 2023.

- (iii) Bail granted by the trial Court to co-accused Rajkumar Baburam Yadav on 4th May 2024 and one Naitik @ Chunmun Ajit Tiwari on 4th May 2024.

7. He also relied upon the observations in case of *Nadeem Abdul Sattar Lakdawala v/s. The State of Maharashtra*⁹.

I am not impressed by those observations. There is some discussion about use of confessional statement of co-accused. The observations reproduced therein cannot be disputed. But, these observations are about confession of co-accused in a normal trial and not a trial under the provisions of MCOC Act.

8. It is true that as per Section 18 of MCOC Act, a confession given by the Accused is admissible piece of evidence not only against the maker but against the co-accused also. There is an emphasis by learned Advocate Shri.Arote that in this case, these two confessional statements cannot be said to be voluntary. Because, they were retracted immediately before the Magistrate. These confessional statements

⁹ Bail Application No.3203 of 2021 : 21st July 2023 : Bombay High Court

cannot be said to be truthful because there are no corroborative materials.

9. It is true that a person can get a bail in MCOC offence, only when the Court will form an opinion that he is not guilty of offence and secondly, if granted bail, there is no likelihood of committing an offence. This is a requirement of Section 21(4)(b) of the MCOC Act.

10. In this case, the deceased was murdered by unknown persons and all these persons were hired by the main Accused. These persons are not the resident of that locality but they are resident of Uttar Pradesh. In such a case, it is also difficult for the Police to collect materials. The Police have done their level best to collect the materials. Admittedly, there are no witnesses who had seen the present Applicant in and around the scene of the offence either prior to commission of the offence or at the commission of the offence. We have got only two types of materials. The first material in the form of confessional statement and the corroborative materials. I have read the confessional statements of the Accused No.1–Rahul Sharma and the Accused No.10–Arjun Rajendra Sing. Accused No.1–Rahul is the actual assailant whereas, Accused No.10–Arjun is having the role of doing

reiki earlier to the offence and be present at the spot at the time of commission of the offence. Both of them explained how they are in contact with the present Applicant – Abhishek and how, they have travelled from Utter Pradesh to Virar on various occasions. Both of them have explained, how they have stayed at Andheri pump house and then, in the building at Flat No.111. It is also true that both these Accused have retracted their confessions. On the point of corroboration, it is true that there are three statements:-

- (a) One by the person who has made a residential arrangement.
- (b) By the person who has made an arrangement for water-supply and
- (c) of a lady who has supplied the tiffin.

11. Admittedly, no Identification Parade was taken in respect of this Applicant asking those three persons to identify the Applicant. Apart from this, there are no statements of persons in the nearby vicinity or C.C.T.V., footages. When, all the materials are seen together, I am unable to form an opinion that there are reasonable grounds for holding him guilty. The Court has to do a delicate task of giving this finding. Though, the material is not scanned after trial but still certain

finding is to be given for the purpose of satisfaction of Section 21 (4)(b) of the MCOC Act. I am inclined to grant him bail. These are my *prima facie* observations.

12. Had it been the fact that apart from the confession, if there are other statements from the nearby vicinity or an Identification Parade, the contention of the prosecution could have been considered. Even though, the confessions are retracted but unfortunately, such statements are not there. If retracted, it does not mean that confession cannot be believed. The trial Court will decide this issue. This is only the offence against the Applicant. So, I am convinced, that a case for bail is made out. Hence, order:-

ORDER

- (i) Bail Application is allowed.
- (ii) The **Applicant – Abhishek @ Ankur Tarkeshwar Singh** arrested in connection with **C.R. No.232 of 2022** registered with **Virar Police Station, District : Mira Bhayander Vasai Virar** for the offences punishable under Sections 302, 201, 212, 120-B of IPC, Sections 3, 25, 27 of the Arms Act and under Sections 3(1)(i), 3(1)(ii), 3(2), 3(3),3(4) of the MCOC Act, **be released on bail on furnishing personal bond and surety bond of Rs.1,00,000/- (Rupees One Lakh Only).**

- (iii) The Applicant is directed to furnish a surety who is having a residence at Thane district.
- (iv) The Applicant to furnish the details of his permanent residence at Banaras by filing an Affidavit by his near relative.
- (v) The **Applicant** not to threaten the prosecution witnesses or to allure them in any manner.
- (iv) The Applicant to attend the Virar Police Station on first Monday of every September, December, March and June of every year from 10.00 to 12.00 noon till completion of the trial.
- (v) He is directed to attend the trial Court punctually.
- (vi) **In case of breach** of the above conditions, the bail of the Applicant is **liable to be cancelled after notice**.

13. In view of the above, **Bail Application stands disposed of**.

14. These are my *prima facie* observations. The learned trial Court need not be influenced by them.

15. The parties to act upon an authenticated copy of this order.

[S. M. MODAK, J.]