

Ajay

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

BAIL APPLICATION NO. 3778 OF 2024

Gopal Radheysham Yadav

.. Applicant

Versus

State of Maharashtra

.. Respondent

-
- Mr. Prashant G. Pandey a/w. Mr. Dinesh Jadhvani; Ms. Riddhima Mangaonkar, Mr. Pramod Sharma, Mr. Krishna Joshi and Mr. Rahul Sinkar, Advocates i/by W3Legal LLP for Applicant.
 - Ms. Sangita E. Phad, APP for Respondent – State.
 - Mr. Motiram Bagad, Asstt. Police Inspector, Tilaknagar Police Station, Dombivali (E) present.

.....
CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 13, 2024.

P.C.:

1. Heard Mr. Pandey, learned Advocate for Applicant and Ms. Phad, learned APP for Respondent – State.

2. Today, I have heard Ms. Phad, learned APP for Respondent – State in her reply to oppose the bail in the present case. She has drawn my attention to the First Information Report (for short “**FIR**”) placed at page No.73 of the Bail Application. Thereafter reading the statement of the complainant appended at page No.85, it is seen that the statement in the FIR was transcribed on 03.08.2018 whereas the subsequent statement was transcribed on 04.08.2018. *Prima facie*, on reading both the statements a clear dichotomy exists. That apart, she

has drawn my attention to the Affidavit-in-Reply filed by Assistant Commissioner of Police on behalf of the prosecution which is appended at page No.529 and thereafter attempted to draw the nexus between Accused No.2, who is the Applicant before me and Accused No.1 who is the chief conspirator. She would candidly inform the Court that Accused No.1 was arrested on 25.08.2018 and thereafter the statement was recorded.

3. Thereafter Ms. Phad has drawn my attention to the three statements of the eye witnesses to the incident namely Pradip Jain (Complainant) himself, Manager of the Complainant who was riding the scooter on the date and time of the incident Mr. Kesarsingh Rajput and Mr. Ramesh Nahar, who was the person to whom the Complainant had called for help and who witnessed the incident. Their statements are appended at page Nos.557, 559 and 561. I have perused the same with the able assistance of Ms. Phad. There is once again a clear dichotomy in narration of the version by the 3 eye witnesses, rather independent eye witnesses namely Mr. Kesarsingh and Ramesh which do not corroborate with the twin statements of the Complainant himself.

4. Thereafter learned APP has invoked the provisions of Section 18 of the Maharashtra Control of Organised Crime Act, 1999 (for short “**MCOC Act**”) and drawn my attention to the confessional statement of

Accused No.1 recorded before the Deputy Commissioner of Police which is appended at page No.574. On being questioned with respect to the statutory provisions requiring recording of the confessional statement before the officer not below the rank of the Superintendent of Police, learned APP has referred to and relied upon a decision of the Supreme Court in the case of ***Zakir Abdul Mirajkar Vs. State of Maharashtra and Ors.***¹ and drawn my attention to paragraph No.64 therein. *Prima facie*, it is seen that in the said paragraph structure of Mumbai Police from the website of the Maharashtra Police which is available in public domain is stated. Merely placing this before the Court would not answer the question posed by the Court with respect to the rank of the officer, who has recorded the statement of Accused No.1 and convince me that he is not below the rank of Superintendent of Police. This is because the structure as set out on the said website notice has no authority of law. There is a specific reason as to why there is statutory provision for recording the confessional statement before the Police Officer not below the rank of the Superintendent of Police as envisaged under Section 18 of the MCOC Act.

5. Ms. Phad would submit that she may be given time to place on record the Government Resolution and/or Notification to show that the rank of the Deputy Commissioner of Police is considered to be equivalent to the rank of Superintendent of Police.

¹ 2022 SCC Online SC 1092

6. At her request, stand over to 16th December 2024. To be treated as “**Part-Heard**” and placed under the caption “**First on Board**”.

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
UGALMUGALE
Digitally signed by
AJAY TRAMBAK
UGALMUGALE
Date: 2024.12.14
17:42:55 +0530