

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

BAIL APPLICATION NO. 4232 OF 2023

Jagdish Trimbak Mandlik ...Applicant
Versus
State of Maharashtra ...Respondent

**WITH
INTERIM APPLICATION NO. 1627 OF 2024**

Vishal Ramesh Mandlik ...Applicant
In the matter between
Jagdish Trimbak Mandlik ...Applicant
Versus
State of Maharashtra ...Respondent

Mr. Abad Ponda, Senior Advocate, a/w Raviraj Paramane and
Deva Shinde, for the Applicant in BA/4232/2023.
Mr. Akshay Bankapur, for the Intervener in IA/1627/2024.
Mr. H. J. Dedhia, APP for the State – Respondent No.2.

CORAM: N. J. JAMADAR, J.
Reserved On: 24th OCTOBER, 2024
Pronounced On: 11th NOVEMBER, 2024

ORDER:-

1. The applicant, who is arraigned in MCOCA Case No.237 of 2021 arising out of CR No.37 of 2021, registered with Gangapur Police Station, Nashik, for the offences punishable under Sections 120B, 302, 201, 115, 109, 419, 420, 465, 467, 468 and 471 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code"), Section 4 read with 25 of the Arms

Act, 1959 and Section 3(1)(i)(ii), 3(2), 3(4) and 3(5) of the Maharashtra Control of Organized Crimes Act, 1999 (“MCOC Act, 1999”), has preferred this application to enlarge him on bail.

2. The indictment against the applicant and co-accused including Sachin Mandlik (A1), the brother of the applicant, is that, in pursuance of a criminal conspiracy initially to usurp the agricultural lands bearing Survey Nos.64/1/1, 28/2, 64/1 and 16 situated at Anandvalli, Gangapur Road, Nashik, belonging to Ramesh Balu Mandlik (the deceased) – the father of Vishal Ramesh Mandlik, the first informant, the accused had set up co-accused Mukta Motkari (A16) as the holder of those lands and an instrument was executed in favour of Abasaheb Bhadange (A7) and Nitesh Singh (A14), the associates of Rammi Rajput (A15), the alleged land grabber. As the deceased challenged the mutation and proceedings were pending before the Courts and Revenue Authorities, Sanchin Mandlik (A1) and co-accused hatched a plan to eliminate the deceased.

3. Pursuant to the conspiracy, on 15th February, 2011 Sachin Mandlik (A1) and co-accused, including the applicant, had a reeve of the land bearing Survey No.69/1; to which the

deceased regularly visited. On 17th February, 2021 at about 5.30 pm. while the deceased was near the well in Survey No.69/1 on the directions of Bhagwan Changle (A8), co-accused Ganesh Kale (A10) assaulted the deceased by means of a sharp weapon. The deceased succumbed to the fatal injuries.

4. During the course of investigation it transpired that, Sachin Mandlik (A1) and his associates indulged in continuous unlawful activities. Sachin Mandlik (A1) was the leader of an organized crime syndicate of which the co-accused and the applicant were the members. The said organized crime syndicate had created a reign of terror in the area falling within the jurisdiction of Gangapur and Sarkarwada Police Station, Nashik. Hence, the provisions contained in MCOC Act, 1999 were invoked. The applicant came to be arrested on 1st June, 2021.

5. The applicant allegedly made a confessional statement under Section 18 of the MCOC Act, 1999. The investigation revealed that the applicant was a confederate in the conspiracy to kill the deceased.

6. I have heard Mr. Ponda, the learned Senior Advocate for the applicant in BA/4232/2023, Mr. Dedhia, the learned APP

for the State, and Mr. Bankapur, the learned Counsel for the applicant in IA/1627/2024 – the first informant. With the assistance of the learned Counsel for the parties, I have perused the report under Section 173 of the Code of Criminal Procedure, 1973, documents annexed with it and the affidavit-in-reply filed on behalf of the State.

7. Mr. Ponda, the learned Senior Advocate for the applicant, submitted that there is no material to make out a *prima facie* case against the applicant. In effect, apart from the fact that the applicant is the brother of Sachin Mandlik (A1), the alleged leader of the organized crime syndicate, who has been released on bail, there is no material to establish the nexus between the applicant and the alleged offences. The applicant has no antecedents. There is hardly any material to show that the applicant has been involved in continuous unlawful activities either individually or as a member of the organized crime syndicate. The three circumstances sought to be pressed into service against the applicant, namely, the confessional statement recorded under Section 18 of the MCOC Act, 1999, the statement of Yogesh Mandlik recorded on 18th February, 2021 and the CDR indicating that the applicant had telephonic conversation

with the co-accused, do not sustain the complicity of the applicant, even *prima facie*.

8. Elaborating the aforesaid statement, Mr. Ponda would urge that the alleged confessional statement of the applicant lacks the element of confession as it is exculpatory in nature. Secondly, the statement of Yogesh Mandlik cannot be said to be sufficient to incriminate the applicant as a conspirator. Thirdly, the applicant had made telephonic calls to the co-accused, who were his relatives and associates since long.

9. Mr. Dedhia, the learned APP, resisted the prayer for bail. CDR was pressed into service to show that the applicant was the confederate in the conspiracy.

10. Mr. Bankapur, the learned Counsel for the applicant in IA/1627/2024, banked upon confessional statement of the applicant as well as Mukta Motkari (A16) and the statement of Yogesh Mandlik to draw home the point that the applicant was privy to the alleged offences. It was urged that the applicant had called co-accused Akshay Mandlik (A2) immediately after the occurrence, and that shows the complicity of the applicant.

11. To start with, it is necessary to note that apart from the instant crime, two crimes are registered against Sachin Mandlik (A1) i.e. CR No.380/2013 and CR No.281/2018 at Gangapur and Sarkarwada Police Stations. No crime has been registered against the applicant. It is true, the requirement of filing of two charge-sheets in respect of the offences punishable with imprisonment for more than three years is qua organized crime syndicate and not each member of the syndicate. Nonetheless, the fact remains that the applicant had almost a clean slate, when the instant offence came to be registered.

12. In the aforesaid context, the allegation that the applicant was privy to the conspiracy to kill the deceased, deserves to be appreciated. The alleged confessional statement of the applicant (pages 376 and 377) *prima facie* does not seem to advance the cause of the prosecution to the extent desired. In the said statement, the applicant has allegedly stated that on 5th February, 2021 co-accused had come to his house. In his presence and that of the other co-accused, Sachin Mandlik (A1) stated that it was necessary to teach a lesson to the deceased as the latter resisted the delivery of possession of the disputed land to the associates

of Rammi Rajput (A15). The confessional statement stops at that.

13. In view of the aforesaid nature of the alleged confessional statement, the aspect as to whether it would amount to a confession *prima facie* appears to be a contentious issue as it would be required to be tested on the touchstone whether the applicant thereby in terms admitted the offence or, at any rate, substantially all the facts which constitute the offences.

14. Reliance placed by Mr. Ponda on the decision of the Supreme Court in the case of *Palvinder Kaur vs. The State of Punjab*¹ appears to be well founded. In the said case it was enunciated as under:

"16. The statement read as a whole is of an exculpatory character. It does not suggest or prove the commission of any offence under the Indian Penal Code by any one. It not only exculpates her from the commission of an offence but also exculpates Mohinderpal. It states that the death of Jaspal was accidental. The statement does not amount to a confession and is thus inadmissible in evidence. It was observed by their Lordships of the Privy Council in *Narayanaswami v. Emperor* (AIR 1939 P.C. 47) that the word "confession" as used in the Evidence Act cannot be construed as meaning a statement by an accused suggesting the inference that he committed the crime. A confession must either admit in terms the offence, or at any rate substantially all the 'facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively, incriminating fact, is not of itself a confession. A statement that contains self-exculpatory matter 'cannot amount to a confession, if the

1 AIR 1952 Supreme Court 354.

exculpatory statement is of some fact, which if true, would negative the offence alleged to be confessed.”

15. Even if, the submission of Mr. Bankapur, the learned Counsel for the applicant in IA/1627/2024 that on the day of occurrence there were four calls between the applicant and Akshay Mandlik (A2) is taken at par, yet, the said fact deserves to be considered in the context of the incident of alleged murder of Ramesh Balu Mandlik. *Prima facie*, communication post occurrence, in itself, without anything more, may not necessarily have conclusive incriminating tendency as the news of murder must have spread fast, far and wide.

16. That leaves the statement of Yogesh Mandlik recorded on 18th February, 2021. Yogesh Mandlik states that on 21st February, 2021, he had seen Sachin Mandlik (A1) and his associates including Ganesh Kale (A10) and the applicant near Survey No.69/1. They were discussing something. After noticing him, the accused party went away. It is imperative to note that in the very statement, the first informant refers to a number of proceedings over immovable properties including Survey No.69/1. Thus, can the conspiracy be inferred on the basis of the presence of the applicant, alongwith Sachin

Mandlik (A1), at the disputed site, a couple of days prior to the alleged occurrence, appears to be a matter for trial.

17. *Prima facie* it does not appear that the applicant was either the assailant or present alongwith Ganesh Kale (A10) and Bhagwan Changle (A8) at the time of the alleged occurrence. Undoubtedly, conspiracies are hatched in secrecy. Rarely, there is a direct evidence. Conspiracy has to be inferred from the attendant circumstances. In the light of the material pressed into service against the applicant, *prima facie* it appears debatable whether the applicant was a member of the organized crime syndicate and confederate in the alleged conspiracy to eliminate the deceased.

18. In the aforesaid view of the matter, the Court may justifiably record a finding that the applicant may not be guilty of the offences for which he has been arraigned. The applicant has been in custody since June, 2021, except the period for which he was released on temporary bail on medical ground. Having regard to the nature of the accusation, the number of the accused and number of witnesses which the prosecution may have to examine to substantiate the charge against the applicant, it is unlikely that the trial can be concluded within a reasonable period.

As the applicant does not have any antecedents, the Court may also draw an inference that the applicant may not indulge in identical offences, if enlarged on bail. I am, therefore, persuaded to exercise discretion in favour of the applicant.

19. Hence, the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant - Jagdish Trimbak Mandlik be released on bail in MCOCA Case No.237 of 2021 arising out of CR No.37 of 2021, registered with Gangapur Police Station, Nashik, on furnishing a P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.
- (iii) The applicant shall mark his presence at the Gangapur Police Station, Nashik, between 10.00 am. to 1.00 pm., on first Monday of every alternate month, for a period of three years or till conclusion of the trial, whichever is earlier.
- (iv) The applicant 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.

- (v) 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.
- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) 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 co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.
- (viii) BA/4232/2023 stands disposed.
- (ix) In view of disposal of BA/4232/2023, IA/1627/2024 stands disposed.

[N. J. JAMADAR, J.]