

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1802 OF 2024

Sanidhya Sambhaji Desai

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Tapkire a/w. Mr. Kochrekar, Mr. Kiran Jaadhav, Mr. Shubham Kadam, Ms. Altiya Shaikh, Mr. Vishal Kolekar, Advocates i/by Randhir Kale for Applicant.
- Mr. Mayur Sonavane, APP for Respondent - the State of Maharashtra.
- Mr. Yusuf Saudagar, Investigating Officer.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 20, 2025

P.C.:

1. Heard Mr. Tapkire, learned Advocate for Applicant and Mr. Sonavane, learned APP for Respondent - the State of Maharashtra.

2. The present Application is filed by Accused No.6 under Section 439 of Code of Criminal Procedure Code, 1973 (for short 'Cr.P.C.') for grant of bail. He is arrested in connection with Crime No.545 of 2023 registered with Chunabhatti Police Station for offences punishable under Sections 302, 307, 120(B), 201, 212 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC'); Sections 325, 327 of Indian Arms Act, 1959 and Sections 3(1)(i)(ii), 3(2), 3(4) of Maharashtra Control of Organised Crimes Act, 1999 (for short 'MCOCA').

3. Case of prosecution is that on 24.12.2023 at about 03:10

p.m. when Informant and his friends came to Shree Photo Studio belonging to Applicant situated at Azad Galli, Chunabhatti, Mumbai for taking photographs for the purpose of displaying them on the happy birthday banner of Informant's friend, Accused persons belonging to a rival faction who had a previous grudge and quarrel conspired and committed the murder of Sumit @ Pappu Yerunkar (deceased) and injured the three friends by firing bullets at them from pistols. Crime came to be registered against Accused persons as above. During the course of investigation it was revealed that Accused persons are members of organised crime syndicate. Hence, prior approval was granted as per Section 23(1) (a) of MCOCA by Competent Authority.

4. The motive of the crime is clearly borne out from the charge-sheet. The charge-sheet clearly etches out the role of deceased victim Sumit @ Pappu Yerunkar and states that for several years he was operating his own gang and for many years he was also in jail. The charge-sheet states that when he was in jail that time another gang proliferated in Chunabhatti area led by the rival faction leader Sunny Patil. The charge-sheet narrates that after Sumit @ Pappu Yerunkar was released from jail on 26.09.2023 his gang members became active in Chunabhatti area and wanted to establish their supremacy over the gang led by Sunny Patil. The deceased Sumit @ Pappu Yerunkar was having 16 offences registered against him under various provisions of IPC, Arms Act and MCOCA. It is stated in the charge-sheet that

looking at the crime landscape of Chunabhatti area within the jurisdiction of Chunabhatti Police Station since long there were two gangs operating therein and both gangs used to quarrel with each other in order to gain supremacy over the other gang. It is stated in the charge-sheet that each of gang wanted to keep their supremacy intact and prevail on the common man in the said area and each of the gang members had several offences registered against them.

5. Applicant before me is a jeweller who is having the jewellery shop in the said area. Mr. Tapkire would draw my attention to the fact that the only allegation / accusation by the prosecution to apprehend Applicant is that Applicant provided his two two-wheelers to the Accused for fleeing from the spot of incident after the aforesaid crime took place. He would submit that in so far the Applicant before the Court is concerned, he is having a jewellery shop in the name of Shreenath Jewellers registered in Maharashtra Shop and Establishments Rules located at Shop No.A/4, Sector - 2, Kalamboli, Panvel, Raigad - 410218. He would submit that on the date of the incident at about 08:00 p.m. one of the Accused visited his jewellery shop. At that time the Accused handed over one gold chain and ring weighing about 67 grams to the Applicant against which the Applicant issued an invoice, bill and gave him Rs.30,000/- in cash as per his request. This invoice and bill is appended to the Application. Since Accused No.2 requested the Applicant to give him his mobile phones

and two bikes as he was in personal need on an emergency basis. Without suspecting any reason, Applicant gave his two motorcycles and mobile phone to the Accused No.2 as the Accused was his client.

6. Mr. Tapkire would draw my attention to the fact that the alleged crime took place at about 03:10 p.m. in the afternoon in the photo studio at Chunabhatti area. He would submit that on the very same evening Accused No.2 approached Applicant and in his jewellery shop in Kalamboli and undertook the aforesaid transactions. He would submit that by no stretch of imagination, Applicant would have any knowledge about the crime which was committed by Accused No.2 and / or his friends during the post-afternoon period. He would submit that transaction which took place between Applicant as jeweller at 08:00 p.m. did not having any nexus with the crime in question. He would submit that to implicate Applicant and link his nexus in crime in question because as against the gold chain and ring provided Rs.30,000/- to Accused No.2 it cannot be concluded that Applicant was having any *mens rea* or motive or knowledge about crime in question. He would submit that Applicant undertook a pure business relationship with Accused No.2 and himself and cannot be said to have harboured the criminal who have committed the crime in question or to be said aided and abetted crime in question. He would submit that other allegation that Applicant had aided and abetted Accused to hide their weapons and clothes is fully false and absurd. He would submit that

though alleged by prosecution that on date of the crime, Applicant was in incarceration as stated by one of the co-Accused is false. He would fairly submit that it is case of Applicant that one of co-Accused namely Sagar Sawant was regular customer of Applicant and he used to purchase jewellery on many occasions and also subscribed the facility of gold bhishi of Applicant.

7. He would submit that in the charge-sheet at page Nos.715 to 719, details have been furnished by Investigating Officer with respect to phone numbers which belongs to his younger brother / son who is a student in question and therefore this clearly prove that alleged CDR which is referred and relied upon cannot prove the Applicant nexus or involvement. He would submit that when the alleged incident took place the Applicant was at shop in Panvel.

8. *PER CONTRA*, Mr. Sonavane has referred to and relied upon the Affidavit-in-Reply dated 13.06.2024. In the said Affidavit-in-Reply, the entire narration of the crime which has taken place is given. That apart, in so far the present Applicant is concerned, details of the two motorcycles which were provided by Applicant to Accused No.2 has been stated. It is stated in the Affidavit that the weapons were disposed of by Accused in Banganga river and clothes were disposed of at various places Panvel to Raigad Highway as per panchnama dated 28.12.2023. It is alleged in the Affidavit-in-Reply that Applicant in

question is new recruit of Sunny Patil gang and present case is the first case against Applicant. It is alleged that he was one of the member of the gang and knew the Accused very well. *Prima facie* what is stated in Affidavit-in-Reply is once again not borne out from the record placed before me. The fact that Applicant is jeweller and is having a jewellery shop for past so many years is admittedly true. The nexus of the Applicant with Sunny Patil gang has not been *prima facie* established. Needless to state it shall be matter of evidence before the Court.

9. From the record placed before me it is seen that against the mortgage / sale of the gold chain and the ring by Accused No.5 with the Applicant / Accused, the Applicant acceded to the request made by the Accused No.5 and in turn gave him Rs.30,000/- in cash and his two motorcycles since the Accused No.5 was his client and was known to him. The Applicant before me is admittedly a jeweller having his jewellery shop and business in Panvel, Navi Mumbai. There is no incriminating material which is placed on record in the charge-sheet by the prosecution to show nexus and knowledge of the Applicant to the occurrence of the crime in question. The Applicant has behaved in an unsuspecting manner which any normal prudent person would otherwise behave. He addressed the emergency expressed by the Accused No.5 by giving him in reciprocation of the gold chain and the ring, the cash amount of Rs.30,000/- and his two motorcycles. The

case of prosecution that Applicant is a member of a crime syndicate is *prima facie* not evident. Hence custody of the Applicant any further is not required considering his role. The Applicant therefore is entitled for bail.

10. The Applicant therefore stands enlarged on bail on the following conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.1,00,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail for securing his released and replace the same by one or two sureties within a period of four weeks from today;
- (iii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 a.m. to 12:00 p.m. initially for three months and thereafter as and when called;
- (iv) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates

unless specifically exempted and will not take any unnecessary adjournments, if she does so, it will entitle the prosecution to apply for revocation of this order;

- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court. He shall deposit his passport with the Trial Court within one week of his release;
- (v) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (vi) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;
- (vii) Any infraction of the above conditions shall entail revocation of this order.

11. It is clarified that the observations in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case.

12. In view of the above directions, Bail Application stands allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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