

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2207 OF 2024

Vishal Krishna Utekar .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Mr. Prashant Pawar a/w. Mr. Abhijeet Sawant, Advocates 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. Pawar, learned Advocate for Applicant and Mr. Sonavane, learned APP for Respondent - the State of Maharashtra. Perused the record.

2. The present Application is filed by Accused No.17 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.544 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 3, 25 and 27 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 gang having previous grudge and enmity conspired and committed the murder of Sumit @ Pappu Yerunkar (deceased) and injured his 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. During the course of investigation, statement of Accused No.5 came to be recorded. Accused No.5's name is Prabhakar Pachindare @ Pachya. He is one of the Accused belonging to the rival faction and the gang led by Sunny Patil. That statement is appended at page No.101. It is stated in that statement that present Applicant who is owner of Shree Photo Studio may have given information to the rival gang led by Sunny Patil about the arrival of the victim Sumit @ Pappu Yerunkar alongwith friends in his photo studio for the photoshoot on that day. Save and except this sole statement of Accused No.5, there is no other material placed on record to show nexus of Applicant to the present crime in question. Charge-sheet is

filed which is appended to the Application. In the charge-sheet it is clearly stated that in Chunabhatti area, there are two gangs who are operating, one led by Sunny Patil comprising of Accused persons and the other led by Sumit @ Pappu Yerunkar and the injured persons. Admitted fact which has come on record is that Sumit @ Pappu Yerunkar was in jail and was released from jail on 26.09.2023.

5. 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.

6. In the above backdrop, the shootout incident in question occurred on 24.12.2023. Applicant before me is a photographer who has a photo studio on Azad Road in Chunabhatti area. He was requested by the deceased victim Sumit @ Pappu Yerunkar to take some photographs for the purpose of displaying them on a happy birthday banner to wish one of his common friends. In order to take those photographs Applicant reached a nearby garden at around 09:20 a.m. on the morning of the date of incident and met the deceased victim's friends Roshan, Akash and others. The deceased victim Sumit @ Pappu Yerunkar also joined them in the garden. Since the light was not adequate enough for taking good photographs, Applicant requested them to come to his studio for clicking the photographs. The deceased victim informed Applicant that they will come to the photo studio post-lunch. At about 03:10 p.m. in the afternoon Sumit @ Pappu Yerunkar and four of his friends reached the photo studio. Sumit @ Pappu Yerunkar went inside the photo studio for taking photographs, and his four friends waited outside the studio. At that time Accused No.5 – Prabhakar Pachindare was observed by one of the victim's friend on a motorcycle opposite the studio staring at them. The First Informant friend also saw Accused No.5 staring at them but immediately Accused No.5 left the incident spot. Thereafter, it is case

of the prosecution that after some time Accused Sunny Patil, Sagar Sawant, Babu Gawand and Naresh Patil came to the photo studio from direction of Azad Galli armed with pistols in their hands and started shouting and looking out for the deceased-victim Sumit @ Pappu Yerunkar while indiscriminately firing at the four friends waiting outside the studio. Just as this happened Sumit @ Pappu Yerunkar was about to step outside the photo studio and he was also shot at. Applicant before me is the owner of the photo studio who at that time was inside clicking pictures of Sumit @ Pappu Yerunkar and when he heard the gun shots he hid himself in order to save himself from the indiscriminate firing which was taking place outside. After the said shootout the Accused persons ran away from the spot of incident whereas the injured were taken to Sion Hospital for treatment by the first informant. Sumit @ Pappu Yerunkar was injured with three gun shots and later on succumbed to his injuries. The other three friends of the victim namely Roshan, Akash, Madan received gun shot injuries. The First Informant - Vinod Ramvilas Vishwakarma @ Munneshwar accompanying them did not receive any injury since he hid himself behind the photo studio at the time of incident. It is case of First Informant in the First Information Report (for short '**FIR**') that when the assailants came to the spot of incident, they were clearly looking for Sumit @ Pappu Yerunkar and repeatedly shouted and asked where he was by indiscriminately firing at his other friends.

7. From reading of the FIR and statement of Accused No.5 recorded by prosecution the nexus of Applicant who is owner of the photo studio of having given any tip or information and that he would be part of a conspiracy for commission of the crime in question is not seen *prima facie*. There is no doubt that the mayhem which took place on the spot of incident between the two gangs where the gang led by Sunny Patil completely overpowered the gang led by Sumit @ Pappu Yerunkar and it resulted in the death of Sumit @ Pappu Yerunkar and causing grievous injury to his three friends / gang members is a serious crime. However, merely on the basis of a statement of Accused No.5 that Applicant Mr. Vishal Krishna Utekar, the owner of photo studio may have given the information of arrival of Sumit @ Pappu Yerunkar and his friends at his photo studio is not sufficient *prima facie* to establish complicity of Applicant on the basis of *prima facie* evidence material.

8. In the FIR itself, it is clearly stated by First Informant - Vinod Ramvilas Vishwakarma @ Munneshwar that when they reached the photo studio and Sumit @ Pappu Yerunkar was clicking his photographs inside the photo studio and the four friends were standing outside the photo studio he had categorically seen Accused No.5 namely Prabhakar Pachindare @ Pachya who was on his motorcycle at that time in front of the studio and he saw that they were standing outside the photo studio and he immediately left from there.

9. Mr. Sonavane, learned APP has vehemently opposed grant of bail to Applicant before me. He would submit that case of prosecution against Applicant is that Applicant was called for clicking photographs by Sumit @ Pappu Yerunkar at a prior point of time but Applicant informed him that since there was not enough light they should come to his photo studio for clicking the photographs. He would submit that on the pretext of clicking photographs, Applicant played the role in ensuring that the rival gang led by Sunny Patil was informed about the whereabouts of Sumit @ Pappu Yerunkar so that they could eliminate him. If this submission of the learned Prosecutor is considered *prima facie*, then it is unfathomable to think that Applicant being owner of the photo studio and involved in taking pictures would put his own life in jeopardy in such a manner. The role of Applicant though indicted by prosecution is *prima facie* clearly based merely on recording of statement of Accused No.5, the statement of Accused No.5 itself does not inspire confidence in the mind of Court. Accused is photographer having his photo studio in Chunabhatti area for the past several years. It is clearly borne out from the record and charge-sheet that victim Sumit @ Pappu Yerunkar and his friends Suraj Mhatre, Himanshu Roy, Toofan Gupta, Umesh Phalle, Ajay Kasoi and Rajesh Palam were all arrested in the Arihant Builder firing case in 2016 and all of were released on bail only in September - 2023 during Ganpati Visarjan. Infact Sumit @ Pappu Yerunkar was released on bail on 26.09.2023. It

is also seen that deceased victim was involved in setting up the cable business of the First Informant. Applicant before me however does not have any history of crime / antecedents.

10. It is rather unfortunate that his photo studio happened to become the common ground and incident spot in the present crime. He has been arraigned as Accused No.17 merely on the ground of suspicion. There is absolutely no material whatsoever in the charge-sheet nor any material which has been placed before me by prosecution to show that Applicant was or is member of the crime syndicate headed by Sumit @ Pappu Yerunkar or he was a group member of that syndicate who was instrumental in passing any information to them. It is only by chance that Sumit @ Pappu Yerunkar wanted to click his photographs for wishing one of his friend on his birthday and for that reason the present Applicant having his photo studio in Chunabhatti area was chosen by them. Applicant admittedly was not named in the FIR when filed. None of the conditions *qua* Applicant as required by MCOCA stand fulfilled. There is no record of any criminal complaint or FIR registered against Applicant in question in the past which is a clear testimony of the fact that he has never been involved in any criminal activity.

11. Considering that there are no antecedents of the Applicant and *prima facie* as delineated hereinabove and participation of

Applicant in the investigation by cooperating and providing to the Investigation machinery the entire CCTV footage from outside his photo studio of the shootout incident, I am inclined to consider the case of Applicant for grant of bail. In my opinion, custodial interrogation of Applicant is not required in the present case.

12. Applicant therefore stands released 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. 25,000/- with one or two sureties in the like amount;
- (ii) Applicant shall be released on cash bail of Rs.25,000/- provisionally and he shall provide the one or two sureties within a period of four weeks from today to the Trial Court;
- (iii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Friday between 10:00 a.m. to 11:00 a.m. for three months initially and thereafter as and when called by the Investigating Officer;
- (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;

(v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(vi) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;

(vii) 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;

(viii) Any infraction of the above conditions shall entail revocation of this order.

13. 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.

14. Bail Application stands allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]