HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2257 OF 2024

Vimal Mohanlal Jain .. Applicant
Versus
The State of Maharashtra .. Respondent

WITH
INTERIM APPLICATION NO.359 OF 2025
IN
BAIL APPLICATION NO.2257 OF 2024

Jyoti Sumit Yerunkar .. Intervenor
IN THE MATTER BETWEEN:
Vimal Mohanlal Jain .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Mr. Aabad Ponda, Senior Advocate a/w. Mr. Kiran Jain, Ish Jain, Mr. Vinayak Siraskar, Mr. Mithilesh Mishra, Mr. Duj Jain and Mr. Nayan Bhalekar, Advocates i/by Kiran Jain & Co. for Applicant.
- Mr. Mayur Sonavane, APP for Respondent - the State of Maharashtra.
- Mr. Santosh Musale, Advocate for Intervenor in Interim Application No.359 of 2025.
- PSI - N. N. Joshi, Chunabhatti Police Station.

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CORAM : MILIND N. JADHAV, J.
DATE : JANUARY 27, 2025

P.C.:

1. Heard Mr. Ponda, learned Senior Advocate for Applicant; Mr. Sonavane, learned APP for Respondent - the State of Maharashtra and Mr. Musale, learned Advocate for Intervenor in Interim Application No.359 of 2025. Perused the record.

2. The present Application is filed by Accused No.13 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 4 friends came to Shree Photo Studio belonging to Applicant situated at Azad Galli, Chunabhatti, Mumbai for clicking photographs for the purpose of displaying them on the Happy Birthday banner of their friend, Accused persons belonging to a rival gang operating in Chunnabhatti area having previous grudge and enmity conspired and committed murder of Sumit @ Pappu Yerunkar (deceased) and injured three friends by firing bullets at them from pistols. First Informant did not receive any injury. Crime was initially registered against 5 Accused persons however there are 16 total Accused. Applicant - Accused No. 13 was arrested on 04.01.2024. Subsequently, during course of investigation it was revealed that Accused persons are members of an organised crime syndicate. Hence, prior approval was granted as per Section 23(1) (a) of MCOCA by Competent Authority.

4. In the charge-sheet it is clearly stated that in Chunabhatti area there are two gangs who are operating, one led by Sanil @ Sunny Patil comprising of Accused persons and the other gang led by Sumit @ Pappu Yerunkar and the injured persons. Admitted fact which has come on record is that deceased - victim Sumit @ Pappu Yerunkar was in jail since 2016 and was released from jail on 26.09.2023. Incident took place on 24.12.2023.

5. The motive of the crime is clearly borne out from the reading of charge-sheet. The charge-sheet clearly etches out the role of deceased - victim Sumit @ Pappu Yerunkar and states that for several years in the past 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, at 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 regrouped and became active in Chunabhatti area and wanted to establish their supremacy over the rival gang led by Sunny Patil. Deceased-victim 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 both these 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 gang wanted to keep their supremacy intact and prevail on the common man in the said area and both gang members had several serious offences registered against them.

6. After the shootout Accused persons ran away from incident spot whereas injured were taken to Sion Hospital for treatment by the First Informant. Sumit @ Pappu Yerunkar was injured with three gun shot wounds and later on succumbed to his injuries. His three friends namely Roshan, Akash and Madan received one gun shot injury each. 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 looking for Sumit @ Pappu Yerunkar and repeatedly shouted his name and asked where he was by indiscriminately firing at his other friends.

7. There is no doubt about the mayhem which took place on the incident spot between the two gangs. The gang led by Sunny Patil completely overpowered the gang members of Sumit @ Pappu Yerunkar and it resulted in the death of Sumit @ Pappu Yerunkar and caused grievous injuries to three members and is a serious crime.

8. Mr. Ponda, learned Advocate appearing for Applicant has drawn my attention to page No.151 of the Application. He would submit that charge-sheet which has been filed by prosecution in the present case clearly draws home the real motive for the crime in the present case. He would submit that motive was simply to establish supremacy of the gang in Chunabhatti area between two rival gangs one led by deceased victim Sumit @ Pappu Yerunkar and the other led by the rival faction of Sunny Patil. He would submit that indictment and arrest of Accused No.13 who is a reputed developer constructing SRA projects in the said area is completely unwarranted. He would submit that there are three specific allegations made by prosecution against Applicant - Accused No.13.

8.1. Firstly, he would submit that it is alleged that Accused No.13 has given his Tata Harrier car to the Accused involved in the crime for use as one Tata Harrier car has been confiscated by them. He would submit that there is absolutely no evidence whatsoever to show that Applicant's Tata Harrier car was ever involved in the crime which is placed on record. Hence, this allegation of prosecution can never be proved even in trial.

8.2. Secondly, he would submit that it is alleged that Accused No.13 gave "supari money / contract killing money" for eliminating Sumit @ Pappu Yerunkar to the rival gang led by Sunny Patil and was thus involved in the conspiracy. He would submit that this allegation would not be sustainable squarely due to the fact that admittedly deceased victim Sumit @ Pappu Yerunkar was incarcerated in jail since 2016 and he was released only on 26.09.2023 and the present incident occurred on 24.12.2023. He would submit that prosecution case of giving the alleged supari money / contract killing money to Sanil @ Sunny Patil is based upon certain payments made by Applicant to Sanil @ Sunny Patil from 13.03.2023 to 29.06.2023. In this regard he has drawn my attention to page Nos.340 and 341. He would submit that separate ledger accounts maintained by Applicant of having made payment to Sanil @ Sunny Patil and another Accused – Sagar Sanjay Sawant are placed on record. These payments pertained to the debris clearance work undertaken by them in Applicant's SRA project under development in the said area. He would submit that it is alleged by prosecution that the amounts stated in the ledger accounts is supari money / contract killing money paid by Applicant – Accused No.13. He would submit that *prima facie*, if the ledger accounts are seen then even from a bare reading of the same it can never be alleged that such amounts which are paid intermittently in such small denominations over a substantial period of three years to Sagar Sanjay Sawant and over a period of eight months to Sanil @ Sunny Patil can be alleged as supari money / contract killing money. He would draw my specific attention to the column of voucher and voucher type and would submit that the said amounts were paid to them for the work of removal of debris from Applicant's construction site and it depended upon the actual work undertaken in that particular month and by no stretch of imagination such payment can ever be alleged to be supari money / contract killing money. I have perused the said ledger statements. All vouchers have been placed on record by Applicant duly endorsed by his Chartered Accountant.

8.3. It is *prima facie* seen that the said statements are credit and debit statements maintained in ledger format which pertain to the work done as per the voucher of work generated for that particular day during that period. Denominations of the amounts which have been paid are not such that they can be alleged to be termed as supari money / contract killing money. The denominations begins from Rs. 1,000/- onwards. In any event if that is the case made out by prosecution there is no other *prima facie* material placed on record to substantiate the said claim. That apart the dates of which the amounts are paid is also very crucial. Admittedly the record spells out that deceased victim Sumit @ Pappu Yerunkar was in jail since 2016 and until 26.09.2023 and was released from prison on that date. Looking at the dates on which the said amounts were paid against the respective vouchers to Sunny Patil from March 2023 to July 2023 it cannot be *prima facie* assumed that it can be called supari money / contract killing money paid for eliminating a person who was within the confines of the jail during that period. Hence this *prima facie* charge of prosecution is not acceptable unless corroborated with evidence .

8.4. Thirdly, he would submit that prosecution are relying on CDR to establish that there was constant and regular communication between Applicant and Sanil @ Sunny Patil before the incident. To this charge, he would submit that considering the work relationship between the two Accused and Applicant-Developer that they used to clear the debris as and when it was generated at the construction site, there is bound to be a talk with them on the phone. The question that would therefore arise is whether such talk is incriminating and linked to the present crime in question. To that extent the charge-sheet is completely silent nor there is any *prima facie* material placed on record to show that Applicant is *prima facie* involved through two Accused persons namely Sagar Sawant and Sanil @ Sunny Balaram Patil.

8.5. He would submit that there are two specific orders passed by the Division Bench of this Court dated 07.11.2023 (Coram : G. S. Patel & Kamal Khata, JJ.) and 18.12.2023 (Coram : G. S. Kulkarni & Jitendra Jain, JJ.) which are appended to the Application at page Nos.185 and 224 which when read would clearly show that there can be no reason for the Applicant being a Developer who to take recourse to any illegal means from any of the co-Accused in the crime. He would submit that by virtue of the said orders the Division Bench of this Court clearly held that re-development of the slums in question was required to be undertaken. He would therefore submit that *prima facie* case of prosecution on the three grounds cannot be taken further as no material has been placed on record to corroborate its allegation. He would submit that prosecution is relying upon statements recorded of the injured persons and some persons residing in the area to implicate the Applicant. These being confessional statements cannot be relied upon at this stage unless strong *prima facie* material exists to link the Applicant to the crime or conspiracy in question.

8.6. In view of the above submissions he would submit that motive of crime has being clearly established as stated in the charge-sheet. He would submit that Applicant has unnecessarily been implicated in the present offence. He would therefore persuade the Court to consider the case of Applicant on the basis of *prima facie* evidence made available in the charge-sheet and release him on bail.

9. ***PER CONTRA***, Mr. Sonavane, learned APP has vehemently opposed release of the Applicant on bail. He would draw my attention to the Affidavit-in-Reply filed by Shashikant Anand Bhandare, Assistant Commissioner of Police attached to Nehrunagar Police Station dated 04.07.2024 to oppose the Application for Bail which is appended at page No.384 of the Application. He would submit that considering the magnitude of the crime which has taken place no *prima facie* case is made out by the present Applicant as the co-accused Sanil @ Sunny Balaram Patil the gang leader of the rival gang has a direct nexus with Applicant and the prosecution has made out a *prima facie* case about involvement of the Applicant in the conspiracy to eliminate the deceased – victim.

9.1. He would submit that amounts are paid by Applicant as per the ledger accounts placed on record by Applicant to the co-accused . He would submit that co-Accused Sanil @ Sunny Balaram Patil had created a reign of terror in Chunabhatti area alongwith his gang members and he is having serious cases registered against him under IPC, MCOCA and Arms Act. He would submit that there is *prima facie* material placed on record to show involvement and participation of Applicant in the conspiracy hatched for eliminating the deceased victim Sumit @ Pappu Yerunkar as he was obstructing the Applicant's redevelopment project. He would state that Applicant belongs to the gang led by Sanil @ Sunny Balaram Patil and since he and his associates are involved in the crime Application for Bail of Applicant be dismissed.

10. Mr. Musale, learned Advocate appearing for the Intervenor-wife of the victim has persuaded me to hear him since Applicant has not come clean before the Court and is guilty of suppression. He has filed Interim Application No.359 of 2025 and a compilation of documents running into 138 pages which is tendered in Court. He has made the four following submissions:-

10.1. He would submit that the Applicant is a Developer, who has been actively developing SRA projects in Chunnabhatti Area, *inter alia*, pertaining to redevelopment of slums. He would submit that in the past Applicant had also taken assistance of the deceased – victim for intervention in issues relating to redevelopment of some slum projects in Chunnabhatti area. He would submit that victim intervened on behalf of several slum-dwellers and had social influence in the area due to which the Applicant and his projects suffered losses.

10.2. He would submit that Applicant with the aid and assistance of a rival gang leader called Sanil @ Sunny Balaram Patil and co-Accused Sagar Sanjay Sawant and their gang members therefore hatched a conspiracy to eliminate the victim. He would submit that family members of the victim are active in local politics for the last 10 years due to their social work. He would submit that victim's younger brother and his wife were contemplating standing for the forthcoming Municipal Corporation Elections and victim's presence would have been a threat to the Applicant if they would have been elected. In this context one ex-corporator called Vijay Tandel was also involved alongwith Applicant. This submission of Mr. Musale needs to be addressed at the outset. It is seen that charge-sheet clearly brings out the motive of the crime which is a fallout for establishing supremacy in Chunnabhatti area by rival gangs. This incident occurred in December, 2023 and therefore this allegation in paragraph No.11 of Interim Application is not sustainable and cannot be countenanced.

10.3. He would submit that both the co-Accused namely Sanil @ Sunny Patil and Sagar Sanjay Sawant have a litany of history of committing crimes. In paragraph No. 13 of the Interim Application details of two previous crimes committed by Sanil @ Sunny Balaram Patil and six crimes against Sagar Sanjay Sawant have been stated.

10.4. He would submit that on the previous day prior to the date of incident, prosecution has collected CCTV footage from the office of the Applicant wherein it is seen that a late night meeting took place between Sanil @ Sunny Balaram Patil and Applicant and it is in this meeting conspiracy to eliminate the victim was hatched. On *prima facie* perusal of charge-sheet it is however seen that the meeting of Sanil @ Sunny Patil with Applicant was between 07:30 p.m. and 08:00 p.m. and therefore the submission cannot be accepted *prima facie* that it was for hatching the conspiracy in view of the work relationship between the parties which has been delineated hereinabove.

10.5. On perusing the record, admittedly ledger accounts of Sanil @ Sunny Balaram Patil and Sagar Sanjay Sawant as maintained in the books of accounts pertaining to the summary of ledger accounts appended on page No. 340 and 341 of the Application have been placed before me alongwith each and every voucher and the Certificate of Applicant's Chartered Accountant by Advocate for Applicant. The Certificate dated 20.01.2025 states that it is the ledger accounts are maintained in the books of account of Applicant's Company *qua* the two co-Accused for the period between 01.04.2020 to 31.12.2023. It is seen that each and every voucher pertaining to the work done on the particular day / period and the ledger account is enclosed to the Chartered Accountant's Certificate. There are a total of 50 vouchers placed before me for the aforesaid period. *Prima facie,* the fact that victim was in jail and released only on 26.09.2023, therefore it comes into play for consideration. The aforesaid ledger accounts date back to the year 2020, when admittedly the victim was in jail.

10.6. Hence, *prima facie* allegation of funding the co-Accused on the basis of the aforesaid ledger accounts cannot be accepted as admittedly the Accused were working for the Applicant's Company for clearance of debris from the construction site of the Applicant.

10.7. The Interim Application itself endorses that Applicant was involved with several SRA projects.

10.8. Mr. Musale would draw my attention to the compilation submitted by him and more specifically to page Nos.90 and 91. He would persuade me to read the statements made and recorded in the charge-sheet and would submit that conspiracy to eliminate the victim is supported by Applicant by allowing the Accused and his gang members to conduct / practice target shooting with live pistols on the terrace of his under construction building project.

10.9. He would submit that a TATA Harrier car belonging to Applicant was used by the co-Accused for transportation and procurement of pistols from Jalgaon and other places. He would submit that the charge-sheet clearly speaks out the assistance provided by Applicant to the co-accused which was due to the previous enmity with the victim linked to the SRA projects. He has read the statements of certain witness which are recorded on the aforementioned pages to substantiate his submissions and would also draw my attention to the statements of injured witness.

10.10. Finally, he would submit that five (5) members Sanil @ Sunny Balaram Patil's family are recipients of flats in SRA redevelopment buildings, registered Agreements of which are placed before me in a separate compilation handed across the bar and would submit that there was a *quid pro quo* between the Applicant and the Accused. He would also place on record four (4) photographs to show that Applicant had attended a birthday party of the said Accused in the past. In so far as this submission is concerned the statements to which my attention is drawn are purely confessional statements which cannot be considered at this stage under Section 27 of the Indian Evidence Act, 1872 for grant of bail. These statements can only be looked at from the point of view of discovery of facts and any history stated there in is inadmissible at this stage. In so far as the allegation of allotment of five (5) flats is concerned it is seen that the allotment are *prima facie* in consonance with the statutory provisions of the SRA and statutes applicable and they speak for themselves and the allotments are as per eligibility of the Applicants therein.

11. I have considered the submissions made by the learned Advocates and perused the record of the case placed before me. It is an admitted position that between 2016 and 26.09.2023 deceased victim was in prison and it is only after he was released from prison that he became active. In so far as Applicant before me is concerned, admittedly he was governed by orders passed by the Division Bench of this Court with respect to the Slum Redevelopment projects that he was developing. Even otherwise he would be governed by the statutory provisions of various statutes as applicable for Slum Rehabilitation projects. Hence to contend that Applicant committed a fraud in the Redevelopment project or was harassing the slum-dwellers whose cause was represented and espoused by the deceased victim and hence Applicant hatched a conspiracy to eliminate the deceased victim cannot be countenanced at this stage on the basis of *prima facie* evidence. This is primarily because as delineated and observed herein above the charge-sheet clearly brings out the motive of the crime. I have already dealt with the submissions of the prosecution and Advocate for First Informant with respect to the amounts paid to the two co-accused over the period of time for the works done by them which is clearly evident from the Chartered Accountant Certificate and vouchers pertaining to the 55 ledger entries placed before me. The case of Complainant and prosecution that Applicant was involved in the conspiracy is not shown to me on the basis of any positive evidence . Complainant's Advocate has read confessional statements of various persons residing in the same area who have spoken about the rivalry and the relationship between the Applicant and deceased victim on the one hand and the co-accused Sunny Patil on the other hand. Such statements do not persuade me at this stage to consider the prosecution case for further incarceration of the Applicant.

12. Save and except the ledger account entries which are appended at page Nos.340 and 341 of the Application, there is no other material which *prima facie* appears to be cogent and relevant to implicate the Applicant which has been brought to my notice. However if the said ledger accounts are seen they clearly give the dates on which the payments were made against vouchers for the work done during the tenure of that period. The payments were undoubtedly made to one of the Accused in the crime but for the purpose and reason of the works that were undertaken by him for the Applicant.

Applicant before me is a Developer who is developing the SR project in Chunabhatti area for which he requires services and for which one of the Accused was working for him and payments were made. If it is case of prosecution that those payments were made for elimination of the deceased-victim of rival gang leader namely Sumit @ Pappu Yerunkar who was an obstruction for the Applicant then there are two things which are required to be *prima facie* shown by the prosecution. Firstly it has to be shown by the prosecution that at any point of time in the past the deceased Sumit @ Pappu Yerunkar had created obstruction to the Applicant in any manner and secondly whether payments which were made from 2020 to Sanil @ Sunny Balaram Patil between 13.03.2023 and 29.06.2023 would be a period which can be taken into account to be the alleged supari money / contract killing money as claimed by prosecution. If the said payments are seen, those payments are against specific vouchers and they are in denomination of Rs.1,000/-, Rs.3,000/-, Rs.5,000/-, Rs.10,000/-, Rs.20,000/-, Rs.25,000/- and not more. There are about 19 entries *qua* Sanil @ Sunny Balaram Patil's ledger account on page No.340 in all during the said period of 3 months. Admittedly between 13.03.2023 and 29.06.2023 the deceased victim Sumit @ Pappu Yerunkar was incarcerated in prison and this very fact is an admitted position and he was released from prison only on 26.09.2023 and therefore by no stretch of imagination can the said ledger account which is placed before me pertaining to the period between 13.03.2023 and 29.06.2023 regarding payments made to Sanil @ Sunny Balaram Patil can be *prima facie* said to be “supari money”. Atleast no *prima faci*e linkage has been established by the prosecution. Prosecution can do so in trial depending upon the evidence it has. Hence, In view of my above *prima facie* observations, any further incarceration of the Applicant is no longer required. Hence, Applicant 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. 1,00,000/- with one or two sureties in the like amount;

(ii) Applicant shall report to the Investigating Officer of the concerned Police Station once every month on first Monday between 10:00 a.m. to 12:00 p.m. for the first six months and thereafter as and when called by the Investigating Officer;

(iii) 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 he does so, it will entitle the prosecution to apply for cancellation 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 two days of his release from prison;

(v) Applicant shall not influence 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 his residence or mobile details, if any, from time to time;

(vii) Any infraction of the above conditions shall entail the prosecution to apply for cancellation of this order.

13. It is clarified that the observations in this order are limited for the purpose of granting Bail only and they are not to be construed as observations on the merits of the case and the Trial shall proceed unhindered in the trial on its own merits strictly in accordance with law.

14. Bail Application is allowed and disposed.

15. In view of disposal of Bail Application, Interim Application

No.359 of 2025 is accordingly disposed.

[MILIND N. JADHAV, J.]

16. After the above order is dictated, Mr. Musale, learned Advocate for Intervenor i.e. wife of deceased victim persuaded the Court to stay the above order to enable the Intervenor to challenge the same before the Superior Court.

17. However the Application made by Intervenor having been dismissed for the reasons stated in the above order, I am not inclined to accept request made by Mr. Musale. In that view of the matter, request made by Mr. Musale stands rejected.

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA HANUMANT SAWANT

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