

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 5137 OF 2024

Bhagwan Balu Changale.

...Applicant.

Versus

State of Maharashtra.

...Respondent.

Mr. Aniket Vagal a/w. Ms. Savvy Kolhekar, Advocate for the Applicant.

Ms. M.H. Mhatre, APP for the Respondent-State.

Mr. Akshay Bankapur, Advocate for the Intervenor(appeared through V.C.).

PSI Shantaram Mahajan, Gangapur Police Station, Dist. Nashik.

CORAM: ASHWIN D. BHOBE, J

DATED: 20th AUGUST, 2025

PC:-

1. Heard Mr. Aniket Vagal a/w. Ms. Savvy Kolhekar, learned Advocates for the Applicant and Ms. Mhatre, learned APP for State.

2. By the present Application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS"), the Applicant is seeking regular bail in Crime No. 37 of 2021 registered with Gangapur Police Station, Dist. Nashik for the offences punishable under Section 302, 120B, 115, 201, 109, 419, 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860 and under section 4/25 of the Indian Arms Act and under Sections 3(1)(i)(ii), 3(2), 3(4), 3(5) of the MCOC Act. Crime No. 37 of 2021 is registered as Special MCOC Case No. 237 of 2021 and is pending

on the file of the Additional Sessions Judge, Nashik.

3. Ms. Mhatre, learned APP on instructions from the Investigating Officer submits that though the charge-sheet refers to 22 Accused, however, only 19 Accused have been charge-sheeted. Applicant is accused No. 8.

4. Prosecution case is that the Applicant is one of the conspirator for committing murder of Ramesh Mandlik. Prosecution has relied upon the CDR and SDR showing continuous phone calls between the Applicant, Sachin Mandlik (Accused No. 1), Akshay @ Atul Mandlik (Accused No. 2) and other persons on the date of the incident (17.02.2021) and prior to the incident. Motive for committing murder of deceased Ramesh Mandlik is a property related dispute.

5. Applicant was arrested on 18/02/2021. First Bail Application filed by the Applicant was withdrawn on 6th January, 2023. Bail Application at Exh. 346 filed by the Applicant in Special MCOC Case No. 237 of 2021 was rejected by the learned Additional Sessions Judge-2, Nashik on 29th August, 2024.

6. Mr. Aniket Vagal, learned Advocate for the Applicant submits that there is no material on record to indicate the Applicant being involved in the crime. He submits that the two witnesses relied by the prosecution to contend Applicant being a part of the conspiracy do not support the prosecution case. He submits that though watch of the deceased Ramesh Mandlik was recovered at the instance of the Applicant, there is a doubt about the said recovery as according to Mr. Vagal, the watch was recovered in the office of Accused No. 1. He submits that the Applicant is in jail for

almost 4 and half years and the trial has not commenced though charge has been framed. He submits that other accused persons in the crime except for Applicant, Accused No. 6 and Accused No. 10 have been released on bail.

7. Ms. Mhatre, learned APP for the State submits that the material on record which includes the statements of Tukaram Ganpat Mandlik and Madhukar Karbhari Sonawane, clearly indicates the involvement of the Applicant in the crime. She submits that in addition to the said statement, recovery of the blood stained watch of deceased Ramesh, at the instance of the Applicant, is sufficient to hold the Applicant being instrumental in committing the crime. She submits that involvement of the Applicant in the present crime is of taking contract to eliminate the deceased Ramesh Mandlik, which fact is proved from the cheque of an amount of Rs. 5 Lakhs drawn in the name of the Applicant, recovered from the premises of the Accused No. 1. She submits that involvement of other accused who have been released on bail are distinguishable from the involvement of the present Applicant, Accused No. 6 and Accused No. 10 in the crime. She submits that the Applicant is the mastermind and if released on bail will tamper with evidence and interfere with witness.

8. Mr. Akshay Bankapur, learned Advocate for the Intervenor in addition to the submissions made by Ms. Mhatre, learned APP submits that the involvement of the Applicant is spelt out in the confessional statement recorded under Section 18 of MCOC Act of the co-accused Jagdish Mandlik and Mukta Motkari. He submits that the Applicant is signatory to the documents which has given rise to the property dispute, which is the motive for committing murder of deceased Ramesh. He submits that the deceased Ramesh had lodged several complaints against the Applicant claiming he

had received threats from the Applicant.

9. In rejoinder, Ms. Savvy Kolhekar, learned Advocate for the Applicant submits that Applicant was the employee of the Accused No. 1 and that the cheque of Rs. 5 Lakhs in the name of the Applicant which was recovered from the office of the Accused No. 1 was towards the service rendered by the Applicant. She submits that the statements of the two eye witnesses relied by the prosecution were recorded after 6 days of the incident. She submits that the Applicant does not have any antecedents and the present crime is the first crime as far as the Applicant is concerned. She submits that the charge was framed on 27th July, 2022. She further submits that there is no material placed on record to show the blood stained watch recovered at the instance of the Applicant, belongs to the deceased Ramesh.

10. Perused the records with the assistance of the learned Advocates.

11. Records reveal two eye witnesses namely, Tukaram Mandlik and Madhukar Sonawane have seen the Applicant giving signal/sign to the assailants in the said crime on the date of incident (17/2/2021). Blood stained watch of the deceased Ramesh is recovered at the instance of the Applicant under section 27 of the Indian Evidence Act. Ms. Mhatre, learned APP and Mr. Bankapur, learned Advocate for the Intervenor by referring to the *Olakh Parade Panchanama* (page 425 of the paper book) submit that the watch which has been recovered at the instance of the Applicant is identified as the watch of the deceased Ramesh. Relevant portion of the Panchanama at page 425 is extracted hereunder :

“[१] १,०००/- रु किमतीचे एक सोनाटा कंपनीचे आतील भाग पिवळसर व बाहेरील बाजुस रिटल कलरचे मनगटी घड्याळ त्यास ठिकठिकाणी रक्त लगलेले.

येणे प्रमाणे नमुद गुन्ह्यातील जप्त मुद्देमाल वर्णन असलेले पाकिट पंच क्रमांक १ यांचे हातात दिले सदर पाकिटास पंच क्रमांक १ व

पंच क्रमांक २ यांनी आळीपाळीने पाहुन खात्री केली. सदर पाकिट हे सिलबंद व सुस्थितीत असल्याचे पंचांनी आम्हास सांगितले. तदनंतर पंच क्रमांक एक यांना सदर पाकिटाची एका बाजूने कैचीने कापुन आतील मुद्देमाल बाहेर काढण्यास सांगता त्यातुन वरिल वर्णनाचे घड्याळ बाहेर काढले. मुळ घड्याळाला रक्त लागले असल्याने बाकीच्या इतर घड्याळांना रक्तसदृश डाग स्केचपेनचे सहाय्याने लावण्यात आले. तदनंतर पंच यांना आम्ही वरिल क्रमांक १ ते ८ पैकी कोणत्याही क्रमांकावर घड्याळ ठेवण्यास सांगता त्यांनी क्रमांक ३ वर मुद्देमालातील घड्याळ ठेवले व इतर क्रमांकावर उर्वरीत ७ घड्याळ ठेवुन आठही क्रमांकावर एक येणे प्रमाणे घड्याळांची मांडणी केली आहे. सदर ८ ही घड्याळ या जवळपास सारख्या वर्णनाचे दिसत आहेत. त्यानंतर नमुद गुन्ह्यातील फिरादी यांना आमचे कक्षात बोलावुन घेवुन दरवाजा लावण्यास सांगितला.

सदर कक्षाची परिस्थिती येणे प्रमाणे आहे की, सर्व खिडक्या व दरवाजे बंद स्थितीत कक्षातील ट्युब लाईट चालु स्थितीत आतुन बाहेर व बाहेरून आत पाहता येणार नाही. अशी स्थिती असुन कक्षात आम्ही स्वताः, पंच क्रमांक १, पंच क्रमांक २, मुद्देमाल कारकुन पोहवा/सोनवणे तसेच नमुद गुन्ह्यातील फिरादी विशाल रमेश मंडलिक हजर आहेत. विशाल मंडलिक यांचा पंचाना व पंचांना विशाल मंडलिक यांचा परिचय करुन दिला त्यानंतर दोन्ही पंचांचे मधोमध विशाल मंडलिक यांना उभे राहण्यास सांगितले व आमचे समोर असलेले टेबलवर ठेवलेल्या ८ मनगटी घड्याळांपैकी त्याचे वडील रमेश वाळू मंडलिक यांचे घड्याळ ओळखण्यास सांगितले असता त्याने पंच व आमचे समक्ष सर्व घड्याळांवर एक नजर फिरवली व त्यानंतर विशाल याने त्याचे उजव्या हाताच्या तर्जनी बोटाने क्रमांक ३ वर ठेवलेल्या घड्याळाकडे बोट दाखवत हे माझे मयत वडील रमेश मंडलिक यांचे घड्याळ आहे असे सांगत आहे. त्यानंतर फिरादी विशाल मंडलिक यास कक्षाचे बाहेर जावुन थांबण्यास सांगितले.” (Emphasis supplied.)

12. Cheque of Rs. 5 Lakhs drawn in the name of the Applicant was recovered from the premises of Accused No. 1. Submission of learned Advocate for the Applicant shows the connect between the Applicant and the Accused No. 1. Confessional statement of Mukta and Jagdish Mandlik indicates connection between the Applicant and Accused No. 1. Accused No. 1 is the gang leader.

13. Motive for eliminating deceased Ramesh, as per the prosecution case is a property related dispute. Mr. Bankapur, learned Advocate for the Intervenor placing reliance on the documents appended to the charge sheet submits that the Applicant is a signatory to document/s pertaining to the property giving rise to the dispute.

14. In the case of *Sachin Bansilal Ghaiwal v/s. State of Maharashtra*¹, the Hon'ble Division Bench of this Court in paragraph-38 and 39, has observed thus :

“38. Thus, according to us and in our humble opinion and after giving our

¹ 2014 Cr. L.J. 217 : 2014 SCC OnLine Bom 725

earnest consideration, the expression 'member' as has been termed in Section 2(1) (d) of the MCOC Act can be interpreted and defined as, a person who participates in the crime either actively or passively or a person who facilitates the commission of the crime committed by the organized crime syndicate or on behalf of the organized crime syndicate, automatically becomes the member of the said crime syndicate which commits the offence or on whose behalf the offence in question is committed, as contemplated under Sec. 2(1)(d), 2(1)(e), Section 3 and other provisions of the MCOC Act.

39. The said intention of the legislature can further be gathered from the expression which is used in sub section (2) of Section 3 of the MCOC Act i.e. "any act preparatory to organised crime" has direct bearing with the expression 'member' which appears in Section 2(1)(d) of the MCOC Act and therefore taking into consideration the intention of the legislature, widest possible meaning has to be given to the expression 'member' as is appearing in Sections 2(1)(d), 2(1) (e), Section 3 and other provisions of the MCOC Act.

(emphasis supplied)"

15. Prima facie a case of hatching a conspiracy to commit murder of deceased is established against the Applicant. Mere prospect of a prolonged trial cannot by itself outweigh the gravity of offence and the incriminating material gathered against the Applicant during the course of investigation (see Kalyan Chandra Sarkar vs Rajesh Ranjan²). Considering the gravity of offence coupled with the apprehensions of tampering with evidence and the bar under section 21(4) of MCOC Act, the Applicant is not entitled to Bail.

16. Criminal Bail Application No. 5137 of 2024 is dismissed.

(ASHWIN D. BHOBE, J.)

² 2004 (7) SCC 528