

Sheetal @ Vicky Nagnath More vs State Of Maharashtra on 26 August, 2024

Author: N. J. Jamadar

Bench: N. J. Jamadar

2024:BHC-AS:34475

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1770 OF 2023

Sheetal @ Vicky Nagnath More
Versus
State Of Maharashtra

Mr.Sudeep Pasbola, Senior Advocate a/w Mr.Swaraj Sable,
Mrunal Bhide, Mr.Uttam Singh Rathod and Rohin Chawhan i
Mr.Ayush Pasbola for Applicant.
Smt. Mahalaxmi Ganpathy, APP for the State.

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CORAM : N. J. JAMA
DATE : 26th AUGUS

PC.:

1. Heard the learned Counsel for the Applicant.
learned APP for State.

2. The Applicant, who is arraigned in C.R. No.
registered with Pandharpur City Police Station, District

for the offences punishable under Sections 120B, 302, 303, 304, 305, 307, 308, 309, 310, 311, 312, 313, 143, 147, 148 and 149 of the Indian Penal Code, 1860 ("Indian Penal Code"), and Sections 3 and 4 read with Section 25 of the Arms Act, 1959 and Section 5 read with Section 27 of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act, 1951 and Sections 3(1)(i), 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 ("MCOCA Act") has preferred the

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application to enlarge him on bail.

3. Briefly stated the prosecution case runs as under:-

(a) Gopal Bajirao Ankushrao (A18), is the leader of an Organized Crime Syndicate styled as "Sirji". Ankushrao (A18) and his associates have created a reign of terror in and around Pandharpur City. Grave offences of murder, attempt to commit murder, kidnapping for ransom extortion and causing grievous hurt are committed by the members of the "Sirji" gang.

Gopal

(b) Sandip Pawar (deceased), the son of the first informant, was a Councillor of Pandharpur Municipal Council. The deceased resisted illegal and unlawful

activities of Sirji gang. Resultantly, the clout of Gopal (A18) and the "Sirji" gang was waning. Gopal (A18) and the members of his gang, thus had a grudge against the deceased.

(c) The prosecution alleges that actuated by diverse motives to eliminate the deceased, on 16 th December 2017, initially accused Gopal (A18), Shital @ Vikas @ Vicky More (A5), the Applicant herein, Sandip Adhatrao (A6)

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and Sunil Wagh (A25) hatched a conspiracy to commit the murder of the deceased. Dada Ghasani @ Piraji Lagade (A20), Digambar @ Diga Janrao (A21), Shahrukh Shaikh (A22), Eknath Shinde (A23) and Bablu Shinde (A27), were drafted in as confederates in the said conspiracy. Deadly weapons and masks were provided to the assailants.

(d) In pursuance of the said conspiracy, on 18th March 2018, while the deceased was having tea at Hotel Shriram Bhojnalaya, Station Road, Pandharpur, Akshay Surwase (A1), Manoj Shirsikar (A3), Sandip Adhatrao (A6), Onkar

Jadhav (A11), Rais Khan (A14), Vishal Pawar (A16), Dada @ Piraji Lagade (A20), Digambar Janrao (A21), Shahrukh Shaikh (A22), Eknath Shinde (A23), Bablu (Absconding A27), Sonu Pukle (A13) and Sagar @ Khandu Bansode (A24), came thereat on the motorcycles. They barged into Hotel Shriram Bhojnalaya. Sandip (A6), Onkar (A11), Digambar (A21), Bablu (A27) were armed with pistols. They shot at the deceased. Akshay (A1), Manoj (A3), Rais Khan (A14), Dada @ Piraji (A20) and Sagar (A24) gave blows by means of scythes on the head, face, hands, chest

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and ears of the deceased in quick succession.

4. The Applicant is alleged to be one of the main members of the Organized Crime Syndicate "Sirji Gang". In the year 2010, Vinayak Kamble was allegedly killed. The deceased Sandip Pawar, Pradip @ Bhaiyya Pawar and others were arraigned as accused in the said crime. Vinayak Kamble was the fast friend of the Applicant and Sandip Adhatrao (A6). The Applicant and co-accused Sandip Adhatrao (A6) were bent on taking revenge. Thus, the deceased was killed in pursuance of the conspiracy.

5. The Applicant came to be arrested on 8 th June 2018.

Eventually, the provisions contained in MCOC Act, 1999, were invoked and the Special Court has taken cognizance of the offences punishable under MCOC Act, 1999.

6. Mr. Pasbola, the learned Senior Advocate for the Applicant, submitted that the role attributed to the Applicant is that of being a conspirator in the conspiracy to eliminate the deceased. The Applicant did not participate in the assault. It is not also the prosecution case that the Applicant was present at the time of alleged occurrence. The Applicant is roped in primarily on the basis of the confessional statement of the co-accused Sunil Wagh

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(A25) recorded under Section 18 of the MCOC Act. The other circumstances of the Applicant and the co-accused having attended a house warming function at the house of witness Manik Mane, whose statement came to be recorded under Section 164 of the Code, the discovery under Section 27 of the Evidence Act and the CDR are not sturdy enough to sustain the weight of the accusation of conspiracy.

7. Mr.Pasbola urged that the Applicant has been in custody since more than six years. The prosecution has cited more than 100 witnesses. Charge has yet not been framed. It is extremely

unlikely that the trial can be commenced and concluded within a reasonable period. Thus, on the count of long period of incarceration, the Applicant deserves to be enlarged on bail.

8. Mrs.Mahalaxmi Ganapathy, the learned APP, strongly opposed the prayer for bail. It was submitted that the Applicant is the principal conspirator. Inviting the attention of the Court to the antecedents of the Applicant including the prosecution for an offence punishable under Section 302 of the IPC and the fact that there is a commonality in the crimes registered against the Applicant and leader of the Organized Crime Syndicate,

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Mrs.Ganapathy strenuously urged that a very strong prima facie case of the Applicant being a prime member of the said Organized Crime Syndicate has been made out. Mrs.Ganapathy further submitted it emerges from the material on record, including the confessional statement of the co-accused, that the Applicant had hatched the plan to commit the murder of the deceased, the Applicant had a strong motive, the Applicant had hired the contract killers and also provided the arms and logistics to them. Therefore, the Applicant does not deserve to be

enlarged on bail.

9. Mr.Pasbola further submitted that, in two out of the seven crimes registered against the Applicant, the latter has been acquitted, including in the prosecution arising out of C.R. No.95 of 2015 for the offences punishable under Sections 302, 201, 120-B, 143, 147 and 149 of the Indian Penal Code, 1860.

10. To begin with, it is necessary to note that prima facie there is material to indicate that the Applicant is a member of the Organized Crime Syndicate. Seven crimes were shown to have been registered against the Applicant since the year 2010. Out of those seven crimes, in C.R. No.51 of 2010 for the offences

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punishable under Sections 143, 147, 148, 332, 353, 427 of the Indian Penal Code, 1860, the Applicant has been arraigned alongwith the leader of the Organized Crime Syndicate, against whom nine crimes are shown to have been registered.

11. Mr.Pasbola made an endeavour to urge that in only one crime, there is an element of commonality. I am afraid, the aforesaid submission does not advance the cause of the Applicant. It is trite that, it is not the requirement of law that two

charge-sheets for the offences punishable for more than three years imprisonment must have been lodged against each member of the Organized Crime Syndicate. If it could be shown that the members of the Organized Crime Syndicate indulged in continuing unlawful activity, singularly or jointly, either as member of the Organized Crime Syndicate or behalf of such syndicate, the offence of 'organized crime' as envisaged by MCOC Act, 1999 can be said to have been made out. Continuing unlawful activity is qua the Organized Crime Syndicate and not each member. This position has been enunciated by the Supreme Court in the case of Zakir Abdul Mirajkar Vs. State of Maharashtra and Ors.¹ What has to be established is the nexus

1 2022 SCC OnLine SC 1092

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between the individual accused and the organized crime syndicate.

12. In the case at hand, prima facie, the antecedents of the Applicant coupled with the material pressed into service against the Applicant justifies an inference that the Applicant has indulged in continuing unlawful activity.

13. The thrust of the submission of Mr. Pasbola was that, the material arrayed against the Applicant is predominantly the confessional statements of the co-accused recorded under Section 18 of the MCOC Act, 1999. Those confessional statements have been retracted. Apart from the confessional statements, rest of the evidence pressed into service against the Applicant, appears to be rather shaky.

14. Prima facie, the confessional statement of co-accused Sunil Wagh (A25) squarely incriminates the Applicant. It indicates that the Applicant was involved at every stage of the alleged conspiracy. Sunil Wagh (A25) states about the motive the Applicant had, the revenge the Applicant harbored, that the Applicant was insisting for the assistance of the said accused in killing the deceased, the Applicant and co-accused Sandip

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Adhatrao (A6) had delivered Rs.2 lakhs to him to hand over the same to the contract killers from Pune; the Applicant had accompanied Sunil Wagh (A25) to Pune and had meeting with the contract killers and hatched the conspiracy, the Applicant had promised to pay the balance amount after the work was executed. In addition, there is a statement of witnesses recorded

under Section 164 of the Code, which indicates that the Applicant, Gopal Ankushrao (A18), the leader of the gang, and Sunil Wagh (A25) together attended the house warming function of the said witness. The CDR further indicates that, the Applicant had been in touch with the co-accused.

15. Mr. Pasbola made an endeavour to urge that the CDR indicates that the Applicant was in touch with Pawan Adhatrao (A10) and Rupesh Survase (A8), who have been enlarged on bail. The learned APP countered by canvassing a submission that the Applicant was in touch with the other co-accused on the phone numbers indicated in the CDR including co-accused Sunil Wagh (A25) and Sandip Adhatrao (A6).

16. It is also necessary to note that, there are statements of other co-accused recorded under Section 18 of the MCOC Act,

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which indicate that, post occurrence, the Applicant and the co-accused Sandip Adhatrao (A6) had met them at Thane.

17. The aforesaid material is required to be appreciated in the light of the antecedents of the Applicant. Therefore, at this stage, the fact that the co-accused have retracted the confessional

statement, cannot justify an inference that the Applicant may not be guilty of the offences for which he has been arraigned.

18. As noted above, the involvement of the Applicant is evident right from the inception of the conspiracy to kill the deceased. The Applicant had hired the contract killers. The Applicant had allegedly provided money to the contract killer. If this material is considered, in the light of the antecedents of the Applicant, the submission on behalf of the Applicant that the charge of conspiracy qua the Applicant does not appear to be sustainable, does not merit countenance. In short, the Applicant appears to be the principal confederate in the conspiracy.

19. The submission of Mr.Pasbola based on long incarceration of the Applicant deserves consideration, at this stage. It is well recognized that the long period of incarceration without a reasonable prospect of expeditious conclusion of the trial,

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impairs the right to speedy trial, a facet of the fundamental right guaranteed under Article 21 of the Constitution of India. It has been held that the statutory restrictions in the matter of grant of bail melt down in the face of such a long period of incarceration,

20. Nonetheless, the gravity of the offences and the role attributed to the Applicant, in the light of the antecedents of the Applicant, in the peculiar facts of the case, in my view, deserve to be taken into account. The deceased was killed in a broad daylight, at a public place, by hiring contract killers. Moreover, in the backdrop of the antecedents of the Applicant it would be hazardous to draw an inference that the Applicant may not indulge in identical offences, if released on bail. There is an imminent risk of tampering with the evidence, threatening the witnesses and again indulging in offences of identical nature. Therefore, this is not a fit case to exercise the discretion in favour of the Applicant.

21. Hence the following order:

2 (2021) 3 SCC 713

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ORDER

(a) Application stands rejected.

(b) By way of abundant caution, it is clarified that the

observations made hereinabove are confined to the consideration 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 the co-accused and the trial Court shall not be influenced by any of the observations.

(N. J. JAMADAR, J.)

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