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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.3066 OF 2023

TINU GEEVARGHESE MATHEW ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Adv. Sana Raees Khan a/w Adv. Aditya Parmar a/w Adv.
Abhijeet Singh a/w Adv. Sagar Kawade for the applicant.
Ms. Megha S. Bajoria, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : APRIL 2, 2024

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.
2. This is an application for bail in respect of the offence punishable under Sections 302, 120(B), 307, 326, 323, 141, 143, 144, 147, 149 read with 34 of the Indian Penal Code (hereafter 'IPC' for short), under Section 4(25) of the Arms Act, under Sections 37(1), 135 of the Maharashtra Police Act and under Sections 3(1)(i), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereafter 'MCOC Act' for short) registered on 16.09.2021 vide C.R. No.802 of 2021 with Kondhwa Police Station.

3. In all there are 11 accused. The applicant is the accused No.5. The applicant was arrested on 28.09.2021. By an order dated 14.03.2024 the co-accused – Rutik @ Bapu S. Sasane was enlarged on bail in Bail Application No.2122 of 2023 passed by this Court. The relevant portion of the order reads thus :-

“3. In all there are 11 accused. The applicant is the accused no.11. The applicant was arrested on 31/07/2022.

4. The date of the FIR is 16/09/2021. The applicant was arrested on 31/07/2022. Learned APP opposed the application for bail. My attention is invited to the affidavit- in-reply filed on behalf of the prosecution and affirmed by Shri Shahuraje Salve, Assistant Commissioner of Police, Wanwadi Division, Pune City, District Pune. The date of the incident is 15/09/2021. On 15/09/2021 between 9:15 p.m. to 9:30 p.m. near Coffee Jar Hotel, Cloud 9 Society Road, Kondhwa, Pune, the complainant Sonu Rasal, deceased Suraj Rasal and their friends Akshay Kumbhar, Rajesh More, Rameshwar Sakhare, Shubham Bedarkar while waiting, two of their other friends namely Pradip Thite, Nithin Patil also joined them and had a conversation with the deceased for 15 to 20 minutes. Later the accused viz Chirag Shewale, Nitin Lohar, Sunil Zare, Akash Kale, Rushabh Shewale, Dhananjay, Rutik Sasane (applicant) Tinu Mathew and 2-3 others came on 5-6 bikes and they stopped near them. The accused were armed with weapons. So far as the applicant is concerned, he had a steel pipe in his hand. They attacked the complainant and the deceased with an intention to kill the deceased. After attacking the deceased and the complainant, they ran away from the spot. It is the contention of the learned APP that the applicant is a member of the organized crime syndicate headed by the co- accused- Rushabh Shewale. My attention is invited to paragraph 15 to demonstrate that 4 offences were registered against the gang-leader- Rushabh Shewale. Learned APP submitted that there is commonality of the offence committed by the applicant with the gang leader in respect of C.R. No. 994 of 2020 registered with Lonikand police station for the offences punishable under sections 307, 143, 147, 148, 149, 323, 504 of IPC and under sections 3(25) and 4(25) of the Arms At. Learned APP submitted that he is the

member of the organized crime syndicate and already charge-sheet is filed against him in a previous offence in common with the gang-leader hence, the applicant is not entitled for bail in view of the bar of section 21(4) of the MCOC Act.

5. Perusal of the statements of eye-witnesses reveals that the applicant was in the company of the other accused. The role assigned to the applicant is that the applicant was armed with a steel rod. The other co-accused are the actual assailants. When the deceased and the complainant tried to flee in the autorikshaw, the present applicant pulled the complainant. It is alleged that he hit the autorikshaw with the steel pipe. Considering the role of the applicant, also considering that the applicant was 22 years of age at the relevant time, I am inclined to enlarge the applicant on bail. No doubt, there is one offence in common the applicant has with the gang-leader vide C.R. 994 of 2020. Perusal of the order enlarging the applicant on bail dated 01/03/2021 in the said case reveals that the trial Court has observed that name of the applicant is not prima facie mentioned nor the exact role of the applicant is mentioned in the FIR. There was no recovery of any weapon from the present applicant in that offence.

6. The applicant was arrested on 31/07/2022 and is now in custody for more than 1 year and 7 months. In the totality of the circumstances, in my opinion, the rigours of section 21(4) of the MCOC Act can be overcome. I propose to impose stringent conditions while enlarging the applicant on bail. Learned counsel for the applicant on instructions submitted that the applicant is willing to reside outside Pune district. It is the submission of the learned APP that the applicant along with the gang-leader and other members have created a reign of terror in the area of Pune especially the jurisdiction of Lonikand and Kondhwa police stations. In my opinion, if the condition of residing outside Pune district during the pendency of trial is imposed on the applicant, it is unlikely that the applicant will commit any offence during the pendency of the trial. The investigation is complete. The charge-sheet has been filed."

4. Learned APP opposed the application for bail. It is submitted that the applicant has participated in the assault and there are two criminal antecedents reported against the applicant. It is submitted that the applicant was present

along with the other two co-accused and hence does not deserve to be enlarged on bail.

5. So far as the present applicant is concerned, it is alleged that the applicant was armed with a plastic pipe. It is alleged that the applicant assaulted the acquaintance of the deceased. There are two criminal antecedents reported against the applicant. The same are independent offences and do not appear to be connected with the organised crime syndicate of which Rushab Shewale is the gang leader. So far as the present applicant is concerned, except for the present offence, there are no offences in common with the gang leader. The applicant is in custody for more than two years and six months. There is no possibility of the trial concluding soon. In the facts and circumstances of this case I propose to grant bail to the applicant by imposing stringent conditions. Hence, the following order :-

ORDER

- (a) The application is allowed;
- (b) The applicant-Tinu Geevarghese Mathew in connection with C.R. No.802 of 2021 registered with

Kondhwa Police Station shall be released on bail on his furnishing P.R. Bond of Rs.50,000/- with one or more local sureties in the like amount;

(c) Except for attending the trial in this case and other cases, the applicant shall not enter Pune district after being released on bail, till the trial concludes;

(d) The applicant shall report to the police station which is nearest to the place of his residence while residing outside Pune district twice a month i.e. on the first and third Monday of every month between 11:00 a.m. and 1:00 p.m., commencing May 2024;

(e) The applicant shall inform the trial Court as well as the Investigating Officer the contact details as well as residential address while residing outside Pune district;

(f) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence;

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

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6. The application is disposed of.

(M. S. KARNIK, J.)