

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

CRIMINAL BAIL APPLICATION NO. 826 OF 2015

Abhay Ram Pawar & Anr. .. Applicants

v/s.

The State of Maharashtra ..Respondent

Mr. Vikas B. Sivarkar for the applicant
Mr. S.S. Pednekar, APP for respondent State

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 20th NOVEMBER, 2015.**

PC.

1. The applicant herein is the accused in Special Case No. MCOCA Case No.15 of 2014, pending before the learned Special Judge, Pune.

2. Heard the learned Counsel for the applicants and the learned APP for the State. I have perused the records and considered the submissions advanced by the learned Counsels for the respective parties. The applicants herein along with the other accused are facing trial for the offence under Section 395 of the

IPC and Section 31(1)(ii), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short 'MCOC Act'). The records reveal that one Reshu Amit Mali had lodged a FIR alleging that on 16.03.2014, she and her husband were travelling by Car No.MH-02-BZ-8545 by Mumbai-Pune Express way. Her husband had stopped the car near Kharadi and had gone to bring drinking water from the food mall. He had locked the car and closed the window of the car. She has stated that while she was seated in the car, some unknown persons told her to roll down the windows and when she refused the said unknown persons broke down the window glass of the car by means of iron rods and rock, assaulted her and snatched Rs.75,000/- from her. The complainant had sustained injuries on her head in the said incident. Based on the said complaint, C.R. No. 132 of 2014 was registered against unknown persons for the offence under Section 395 of the IPC and Section 31(1)(ii), 3(4) of the MCOC Act.

3. The learned Counsel for the applicants has stated that since only one charge-sheet is filed against the applicants, the provisions

of Section 2(3) of the MCOCA Act are not attracted. He has further submitted that there is no *prima facie* material to show the involvement of the applicant in the said crime. Per contra, the learned APP has submitted that the applicant is a member of a gang headed by Shantaram Mukane. Said Shantaram is facing trial in more than one case. The learned APP has further submitted that there is *prima facie* material to show the involvement of the applicants in the crime.

4. I have perused the records and considered the submissions advanced by the learned Counsels for the respective parties. The affidavit filed by Mahendra Sambhajirao Nimbalkar, Assistant Police Inspector, attached to Wadgaon Mawal Police Station, Pune reveals that the applicants accused herein are the members of the organized crime syndicate headed by one Shantaram Balu Mukane. Said Shantaram Mukane is the accused no.1 in MCOCA Case No.15 of 2014. The affidavit further reveals that the said Shantaram Mukane is facing trial in cases arising from C.R.Nos.137 of 2014 and 132 of 2014 under Section 395 of the

IPC registered by the Vadgaon Mawal Police Station, Pune. Filing of more than one charge-sheet against said Shantaram, the head of the Gang organized crimes, in my considered view, *prima facie* satisfies the requirements of Section 2(d) of the MCOC Act.

5. Furthermore, the material on record more particularly the confessional statement of Laxman Pawar and Arjun Hiram reveals the involvement of the applicants herein in commission of the crime and hence *prima facie* there are reasonable grounds to believe the involvement of the applicants in commission of the alleged offence.

6. In the case of *State of Maharashtra Vs. Vishwanath Maranna Shetty (2012) 10 SCC 561*, the Apex Court has held that “while dealing with the application for grant of bail, in addition to the broad principles to be applied in prosecution for the offences under IPC, the relevant provision in the said statute, namely subsection (4) of Section 21 has to be kept in mind. It is further held

that a bare reading of the non obstante clause in sub-section (4) of Section 21 of MCOCA that the power to grant bail to a person accused of having committed offence under the said Act is not only subject to the limitations imposed under Section 439 of the Cr.P.C., 1973 but also subject to the restrictions placed by clauses (a) and (b) of sub-section (4) of Section 21. Apart from giving an opportunity to the prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. The satisfaction contemplated in clauses (a) and (b) of sub-section (4) of Section 21 regarding the accused being not guilty, has to be based on “reasonable grounds”.

7. In the present case, the material on record prima facie discloses reasonable grounds to believe the involvement of the applicants in the offences as alleged in the complaint. The

offences are grave and considering the nature of the offence and the antecedents of the applicants, the possibility of repeating such crimes cannot be ruled out. Hence, the applicants herein are not entitled for bail.

8. In view of the discussion supra, the application, is dismissed.

(ANUJA PRABHUDESSAI, J.)