



2. It is the case of the prosecution that on 25<sup>th</sup> February, 2011 at about 12.30 pm. when the complainant along with other office staff were present in the office at that time two unknown persons entered the office. The receptionist inquired with them about the work. At that time, one of them fired 2-3 rounds from his pistol towards the staff members. In that firing Devika Kodilkar and Ranjit Aaher sustained bleeding injuries. Thereafter both the unknown persons ran away from the spot in a car. The injured persons were taken to the hospital. Then the complainant Gautam Karbhari gave first information report to Indira Nagar police station, Nashik against two unknown persons. Pursuant to which, the police registered the offence. It is the case of the prosecution that the incident of firing has taken place at the instance of gangster Ravi Pujari and it was taken place to create terror in the mind of the builder in order to facilitate the extortion. As per the case of the prosecution, the applicant/accused Arvind Chavan was driving a car in which the shooters arrived at the spot and ran away. He was arrested on 6<sup>th</sup> May, 2011. Hence, this bail application.

3. The learned counsel for the applicant/accused has

submitted that the incident has taken place at Nashik. However, the investigation was transferred to DCB CID, Mumbai and the charge sheet was filed by DCB CID, Mumbai. He submitted that DCB CID, Mumbai gave approval and sanction for applying MCOC Act. He submitted that District Court, Nashik is a designated Court and having jurisdiction to try and conduct the cases under MCOC Act within the jurisdiction of Nashik city. No Court can take cognizance of the offence under Section 23 of the MCOC Act without previous sanction of the police officer not below the rank of the Joint Commissioner of Police. As the case is from Nashik city, there is no approval of a competent police officer from Nashik. Considering the provision under Section 23(2) of the MCOC Act, the applicant/accused is to be bailed out for want of proper approval. He further submitted that the applicant/accused is alleged to be a member of the gang Ravi Pujari. However, the prosecution has not come with the material to show the nexus with the gangster Ravi Pujari and the applicant/accused. The only evidence against the applicant/accused is a confessional statement of the applicant recorded under Section 18 of the MCOC Act. However, the said statement is retracted by the applicant/accused. He further submitted that even if the confessional

statement as it is believed, there is no offence made out against the applicant/accused.

4. The learned counsel for the applicant/accused relied on the order passed by this Court dated 21<sup>st</sup> August, 2013 in B.A.No. 892 of 2013 in the case of "*Sandeep Ramashray Sharma vs. State of Maharashtra*". He submitted that the accused Sandeep is the original accused No. 4 and the applicant is accused No. 2. However, accused Sandeep has granted bail by this Court and in the said order this Court has observed that there is a doubt in respect of whether the offence committed at Nashik or at Mumbai or partly at Nashik and partly at Mumbai. Hence, the learned Judge has kept the trial in abeyance and therefore the bail was granted to accused Sandeep. He further submitted that the weapon which, as per the allegation of the prosecution was purchased through the co-accused Suresh Shetty was the same weapon which was used in the crime. The learned counsel for the applicant/accused has submitted that the offence is of the year 2011. Since last four years the trial is pending. He further pointed out that the learned Special Judge, a designated Court, Mumbai had referred the matter to the State Government to decide the jurisdiction

of the case and till today no order is passed by the State Government on that issue. Therefore, the trail before the Sessions Court is not proceeded. The matter was sent to Nashik Court as per the order passed by the learned Special Judge under MCOC Act.

5. The learned prosecutor opposed the bail application. He relied on the confession statement. He also relied on the statements of the witnesses. He submitted that the incident happened in the office of a builder at Nashik. The applicant/accused, throughout the incident was waiting outside the said office and after firing he took away the accused from the spot. He further submitted that there is evidence against the applicant/accused. He was given a job of purchasing weapons from one Sandeep who is accused No. 4 and he acted accordingly. He also received Rs. 10,000/- from accused Suresh Shetty who is the close associate of the gangster Ravi Pujari. According to the statements of the witnesses recorded, it seems that the applicant/accused had contacted on telephone with gangster Ravi Pujari. Though the applicant/accused does not have criminal antecedents, he was associated with a gang and he has participated in the conspiracy. Under such circumstances, no bail can be granted to

the applicant/accused. The learned prosecutor relied on the affidavit filed by the investigating officer dated 17<sup>th</sup> July, 2014.

6. The learned prosecutor further relied on the observation made by this Court in para 11 of the order dated 21<sup>st</sup> August, 2013 in B.A. No. 892 of 2013 which is as follows:

*“Undoubtedly, the involvement of co-accused Arvind Chavan in the alleged offence is disclosed from his own confession and he appears to have taken part in actually taking the assailants to the Nashik site office of Ashok Mohanani.”*

7. Perused the first information report, statements of the witnesses which are produced by the prosecution. So also the affidavit of the investigating officer. The applicant/accused, as per the case of the prosecution, is not the actual shooter. However, from the evidence, prima facie it shows that he has actively participated in procuring the weapons which might not have used in the said firing. However, it facilitate the commutation of the shooters to the office of the builder and for running away from the spot. The statements of witnesses discloses that the applicant/accused had directly

communicated on telephone with the gangster Ravi Pujari, the head of the gang. The confessional statement is subsequently though retracted, its evidential value can be ascertained at the time of trial. There are number of instances disclosing the active part played by the applicant/accused in the conspiracy of firing and extortion. Prima facie there is evidence against the applicant/accused. The observation made by this Court in the order dated 21<sup>st</sup> August, 2013 is also taken into account. Thus, considering the bar under Section 21 of the MCOC Act, I am of the view that this is not a fit case to grant bail to the applicant/accused.

8. From the submissions of the learned counsel for the applicant/accused and the learned prosecutor, it is informed that the State Government has not passed any order on the issue of jurisdiction which was referred to the State under sub-section (2) of Section 5 of the MCOC Act. It is necessary for the State Government to pass order immediately if such matter is referred to the State by the designated Court under the MCOC Act. Therefore the Secretary, Law and Judiciary, Government of Maharashtra is hereby directed to pass appropriate order and take decision under sub-section (2) of

Section 5 of the MCOC Act, as per the reference made by the designated Court and it is to be communicated to the concerned designated Court and also to the High Court. This issue to be taken up immediately and to be decided before 14<sup>th</sup> August, 2015. The applicant/accused may move application for expeditious hearing before the concerned Court thereafter.

9. With the aforesaid direction, the bail application stands rejected.

**(MRS.MRIDULA BHATKAR, J.)**