

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 367 OF 2016

Jayram s/o Savaleram Gorde ...Applicant

versus

The State of Maharashtra ...Respondent

.....
Mr. N. B. Narwade, Advocate for applicant
Mr. K. D. Munde, A.P.P. for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 18th FEBRUARY, 2016

ORAL ORDER :

The applicant is seeking regular bail in crime No. 25 of 2015 registered with the Chavani Police Station, District Aurangabad for the offence punishable under Sections 395, 397 of Indian Penal Code and under Sections 3(I)(II), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act (MCOCA).

2. While trying to make out a case for grant of bail, Mr. Narawade, learned Counsel for the applicant would urge that invoking of provisions of MCOCA against him in the present matter was uncalled for. So as to substantiate his contention, he has invited my attention to the sanction granted by the authority wherein the

authority has taken into account two offences against him i.e. present one Crime No. 25 of 2015 registered with Chavani Police Station, Aurangabad for the offence punishable under Sections 395, 397 of Indian Penal Code and provisions of MCOC Act and another one Crime No. 09 of 2015 registered with Sangamner Police Station, District Ahmednagar for the offence punishable under Section 379 read with Section 34 of Indian Penal Code.

3. According to learned Counsel for the applicant, since the applicant belongs to particular community (Pardhi community), the applicant is falsely implicated in the crime in question.

4. In addition to above, he would urge that one more reason for which the applicant is required to be released on regular bail is, the incident in question took place on 23/02/2015. The Test identification parade was held on 03/05/2015 and in view of inordinate delay of about three months in Test Identification Parade, according to him, is required to be discarded, as the said delay cannot be taken into account, becomes doubtful and as such, benefit is required to be given to the applicant. According to him, nature of offence as alleged against him, cannot be considered to be sufficient evidence to deny the release.

5. Learned A.P.P. opposed the application on the ground that confessional statement of brother of applicant under Section 18 of the MCOC Act, which speaks about involvement of present applicant in the crime in question. He would then urge that as there is appropriate sanction after pendency of two crimes against the applicant and more than one charge sheet against syndicate of which the applicant is a member. Learned A.P.P. invites my attention to the fact that the applicant was found to be member of syndicate who are involved in the crimes which include members from other States.

6. Having bestowed my thought to the submissions made, it is required to be noted that in the confessional statement of real brother of present applicant under Section 18 of the MCOC Act, he has specifically named present applicant as one of the accused who was benefited in Crime No. 25 of 2015. So far as delay in Test Identification Parade is concerned, it is required to be noted that while committing crime No. 25 of 2015 the accused persons have assaulted the complainant. Apart from that, his health was not supporting him, as such on 18/04/2015 he was unable to attend, as appears to be the cause cited in the charge sheet, as such, Test Identification Parade was held on 03/05/2015, the date on which the present applicant was identified by the complainant as one of the accused. There is substantial recovery against the applicant.

7. The requirement of invoking MCOC Act in the present case is satisfied as there is more than one charge sheet pending against the applicant. The general scrutiny of evidence collected as against the applicant, particularly from the statement of witnesses could be inferred that the applicant is *prima facie* involved in the crime in question, as such, the application fails, stands rejected.

[N.W. SAMBRE, J.]