

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

Criminal Application No. 2590 of 2016

District : Ahmednagar

Nana s/o. Sahebrao Chavan,
Age : 21 years,
Occupation : Labour,
R/o. Bajrang Chowk,
Ward No.2, Shrirampur,
Taluka : Shrirampur,
District : Ahmednagar. .. Applicant.

versus

The State of Maharashtra,
Through City Police Station,
Shrirampur,
Taluka : Shrirampur,
District : Ahmednagar. .. Respondent.

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Mr. Majit S. Shaikh, Advocate, for the applicant.

*Mrs. P.V. Diggikar, Addl. Public Prosecutor, for
the respondent.*

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With

Criminal Application No. 3470 of 2016

District : Ahmednagar

Samya @ Samir s/o. Sultan Shah,
Age : 20 years,
Occupation : Labour,
R/o. Ward No.2, Shrirampur,
Taluka : Shrirampur,
District : Ahmednagar. .. Applicant.

versus

The State of Maharashtra. .. Respondent.

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*Mr. Shaikh Mazhar A. Jahagirdar, Advocate, for
the applicant.*

*Mrs. P.V. Diggikar, Addl. Public Prosecutor, for
the respondent.*

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CORAM : A.M. BADAR, J.

DATE : 8TH SEPTEMBER 2016

ORAL ORDER:

Applicant Nana s/o. Sahebrao Chavan in Criminal Application No. 2590/2016 and applicant Samya @ Samir s/o. Sultan Shah in Criminal Application No. 3470/2016, are accused in Crime No. I-39/2015 for offences punishable under Sections 395, 341, 427 of the Indian Penal Code and under Sections 3(1)(ii) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 [**For short, "MCOC Act"**]. By these applications, they are praying for releasing them on bail.

2. The learned Counsel appearing for applicant Nana Chavan argued that prosecution is not fulfilling the condition of filing of more than one charge-sheet

against applicant Nana Chavan and, therefore, provisions of the MCOC Act are not applicable to his case. It is further argued that though the informant and witnesses are alleging that they were beaten at the time of dacoity, the charge-sheet does not reflect any consequential injury on person of either the informant or witnesses. The learned Counsel, therefore, submits that applicant Nana Chavan is entitled to be released on bail after completion of investigation as he is behind bar from the year 2015.

3. The learned Counsel appearing for applicant Samya @ Samir Shah argued that there is only one charge-sheet against the applicant apart from the crime in question and therefore, in his case also, provisions of the MCOC Act are not attracted. The learned Counsel further argued that applicant Samya @ Samir Shah was not subjected to test identification parade and nothing was recovered from him so as to connect him to the crime in question. Therefore, he is entitled for bail.

4. The learned Addl. Public Prosecutor opposed applications by contending that the crime in question is serious and there is enough evidence on record to connect applicants to the crime in question.

5. Perused the charge-sheet including the FIR

lodged by Naresh s/o. Tulshiram Barthare. At the outset, let us deal with the submission of the learned Counsel for applicants, that as not more than one charge-sheet has been filed against present applications, provisions of the MCOC Act are not attracted in this case. Perusal of the charge-sheet shows that there are in all six accused persons in the instant case. As against applicant Nana Chavan, except this crime, no other crime seems to have been registered.

6. So far as applicant Samya @ Samir Shah is concerned, Crime No. 212/2014 for the offence punishable under Section 395 of the Indian Penal Code is registered against him which has resulted in registration of Sessions Case No. 43/2015. Apart from the said crime and the crime in question, there is no other crime registered against him which has resulted in filing of the charge-sheet.

7. Section 2(1)(d) of the MCOC Act defines "*continuing unlawful activity*" and the requirement is filing of more than one charge-sheet before competent Court within the preceding period of 10 years and that cognizance of the said crime by the Court. In the matter of **Sachin Bansilal Ghaiwal Vs. State of Maharashtra** [2014(3) Bom.C.R.(Cri.) 774], this Court has held that what is contemplated under Section 2(1)(d)

of the MCOC Act is that activities prohibited by law for the time being in force which are punishable as described therein have been undertaken either singly or jointly as a member of organized crime syndicate and in respect of which more than one charge-sheet has been filed. Stress is on the unlawful activities committed by the organized crime syndicate. Requirement of one or more charge-sheet is qua the unlawful activities of the organized crime syndicate and not against each and every accused in the offence punishable under provisions of the MCOC Act.

8. In the case in hand, there are six accused persons and so far as other accused are concerned, more than one charge-sheet has already been filed against them. As such argument that not more than one charge-sheet has been filed against present applicant and therefore provisions of the MCOC Act are not applicable to their cases, does not hold any water.

9. So far as applicant Nana Chavan is concerned, FIR shows that he was caught red handed on the spot after passersby as well as Police came on the spot. The crime in question allegedly occurred when on 16.02.2015, informant Naresh Barthare along with his colleagues were undertaking the work of testing range of towers of Telecom Company.

Averments in the FIR are to the effect that six persons came on two motorcycles and accosted them. Thereafter the informant and his associates were robbed of their valuables and cash. Out of six dacoits, four were apprehended on the spot. Applicant Nana Chavan was one of them.

10. Perusal of the charge-sheet goes to show that there is material to connect applicant Nana Chavan with the crime in question and there is no material to come to the conclusion that there are reasonable grounds for believing that applicant Nana Chavan is not guilty of the offence punishable under provisions of the MCOC Act. Therefore, in view of bar of Section 21 of the said Act, his application deserves to be rejected.

11. So far as applicant Samya @ Samir Shah is concerned, as admitted by the learned Addl. Public Prosecutor, except disclosure by co-accused who were apprehended on the spot, that applicant Samya @ Samir Shah was one of the member of the gang of dacoits, there is no other material to indict him in the crime in question. Nothing was recovered from him nor he was subjected to test identification parade by the prosecution. Perusal of the charge-sheet does not prima facie shows his complicity in the crime in question and therefore, I am satisfied that there are

reasonable grounds for believing that he is not guilty of the offence punishable under provisions of the MCOC Act. In this view of the matter, his application for bail deserves to be allowed.

12. Hence, I pass the following order :-

(a) Criminal Application No. 2590 of 2016 preferred by Nana s/o. Sahebrao Chavan is rejected.

(b) Criminal Application No. 3470 of 2016 preferred by Samya @ Samir s/o. Sultan Shah is allowed. Applicant / accused Samya @ Samir Shah, in the above crime, be released on bail on his executing P.R. Bond in the sum of Rs. 30,000/- and on furnishing one or more solvent sureties of the like amount, on the following conditions :-

(i) Applicant Samya @ Samir Shah shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(ii) Applicant Samya @ Samir Shah shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial against him.

(iii) Applicant Samya @ Samir Shah shall not repeat commission of similar type of offences in future.

13. Both Applications are disposed of accordingly.

14. Needless to mention that the observations made in this order are prima facie in nature which shall have no bearing on trial of the case.

(A.M. BADAR)
JUDGE

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