

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

902 CRIMINAL APPLICATION NO. 3883 OF 2016

SUSHIL S/O GOPIKISHAN NATEKAR
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : S G Ladda
APP for Respondent: S.R. Yadav
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CORAM : T.V. NALAWADE, J.
DATED : 23rd August, 2016.

ORDER :

1. This is the second bail application filed for bail in C.R. No. 262/2013 registered in Jalna Tahsil Police Station for offences punishable under sections 302, 396, 397, 34 etc. of Indian Penal Code, section 2 r/w. 25 and 27 of Arms Act. Chargesheet is filed for the aforesaid offences and also under section 3(1) (ii), 3(2), 3(4) of Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as 'MCOC Act' for short). As in the past, bail was not granted by this Court, it was necessary for the applicant to show that there has been change in the circumstances.

2. The learned counsel for applicant argued to show to this Court that the provisions of MCOC Act cannot be used against the present applicant. He argued also on merits of the

case for other offences and submitted that there is no sufficient material to keep the applicant behind bars. He submitted that the applicant has been behind bars since 24.8.2013 and as the case has not made progress in the Court, the applicant cannot be kept behind bars.

3. It needs to be kept in mind that the material collected for the offences like sections 396 and 397 of I.P.C. cannot be separately considered in the case where the provisions of MCOC Act are used. The statements recorded by Superior Officer under this Special Act can be used against the accused and co-accused.

4. The incident took place on the night between 23.8.2013 and 24.8.2013. The deceased had left the company of his colleagues on that night and he had alighted from the vehicle near Kiran Petrol Pump, Jalna. One Shaikh Nuruddin has been working as a watchman at this petrol pump. He noticed that the deceased had alighted from a jeep and he was proceeding towards bus stand and he was passing by the side of the petrol pump. He noticed that on two motorcycles six persons came near him and near the petrol pump, these persons started attacking the deceased with the weapons like Rampuri and

Jambhiya. These persons were not known to the watchman, but he could notice that one was aged about 40 to 45 years, some persons were aged about 20-25 years and atleast three persons were appearing to be aged about 15 to 20 years. They used the weapons and when the deceased collapsed, they snatched and took away the finger rings and cash amount which were on the person of the deceased. They left on the two motorcycles on which they had come there. This watchman contacted others but he could not go ahead when the incident was going on out of fear. Information was then supplied to police and police came to the spot. This incident was noticed by Vijaykumar, other employee attached to this petrol pump and also by Vishal.

5. On the basis of information collected, police traced the present applicant and he came to be arrested on 24.8.2013 and the arrest panchanama was prepared at about 17.30 hours. Other accused like Vickky alias Tanya, Sachin, Aklesh were also traced on the same day i.e. on 24.8.2013.

6. When the present applicant was arrested, blood stains were found on his clothes, on his shirt. Similarly, blood stains were found on currency note of Rs. 100/- denomination which was found on the person of Sachin and blood stains were

found on the shirt of accused Aklesh.

7. During the course of investigation, present applicant gave statement under section 27 of the Evidence Act and on that basis, the weapon Rampuri was recovered on 28.8.2013 and there were blood stains on this weapon. One silver ring was recovered from Aklesh and prosecution wants to prove that this silver ring was of deceased. Other silver ring was recovered from Aklesh and prosecution wants to prove that this silver ring was also of the deceased. From Narayan, other accused, other weapon like Jambhiya came to be recovered.

8. Under the provisions of MCOC Act, the statements of present applicant and Narayan are recorded and there are statements of other accused and they show that aforesaid offence was committed by them together. They gave the account of previous similar offences committed by them, their gang.

9. The material collected shows that as against the present applicant at least two crimes were registered on 24.8.2013, after the arrest of the applicant. Both the offences involve the same intention, to rob somebody. Much was argued

by the learned counsel for applicant on the circumstance that on the same day, two crimes were registered. This circumstance cannot come in the way of police to make proposal as not only offences committed by the member of gang like present applicant can be considered, but the crimes committed by the members of the gang need to be considered at the time of according sanction to prosecute under the provisions of this Special Act. The order of sanction shows that the material against all the members of the gang is considered and the material that Narayan Jadhav is leader of this gang and that they have been continuing such illegal activity for many years and many offences are registered against members of this gang is considered. The offences are registered in Tahsil Police Station Jalna, Badnapur Police Station, Sadar Bazar Police Station, Jalna etc. and in most of the offences force was used for committing the offence of robbery. MCOC Act is used in nine cases against the members of this gang.

10. The learned counsel for applicant placed reliance on the case reported as **2015 AIR (SCW) 4314 [State of Maharashtra Vs. Shiva @ Shivaji Ramaji Sonawane & Ors.]** and on the basis of observations made, he submitted that in other case filed against the present applicant, he is acquitted.

The observations made by the Apex Court are with regard to different facts and one offence in that case was committed prior to the coming in to force of this Special Enactment. Subsequent acquittal in such a case when other offence was also committed after coming into force of the provisions of the Act cannot give circumstance for holding that MCOC Act is not applicable in the remaining case.

11. On the other hand, the learned APP placed reliance on the cases like **2013 AIR (SC) 158 [State of Maharashtra Vs. Vishwanath Maranna Shetty]**, **2009 ALL MR (Cri) 1903 [Govind Sakharam Ubhe Vs. State of Maharashtra]** and **AIR 2007 SC 1253 [Vinod Asrani Vs. State of Maharashtra]**. This Court, Division Bench has considered the meaning of expression 'continuing unlawful activity' given in section 2 (1) (d) of MCOC Act and it is laid down that it is not necessary that in fact more than one chargesheet is filed against the accused for using special provisions. It is laid down that the requirement of one or more chargesheet qua is the unlawful activity of the organised crime syndicate and not qua individual member thereof. In case of **Vishwanath Shetty** cited supra the Apex Court held that the person who was handling cash of the gang and when the gang had committed many offences for

making money was also accused and provision of this Special Act can be used against that accused also though he had not participated in actual offences. In the present case, there is aforesaid material against the present applicant to show his participation and one murder was committed for robbing the man, who was stranger to that place and the offence was committed in the night time. Whether the applicants can be identified or not identified by the aforesaid witnesses, who witnessed the incident need not be considered at this stage. The aforesaid material is sufficient to link the present applicant with the offence committed. This Court holds that it is not a fit case to grant bail. Such accused persons never become available for trial and there is strong probability that he will abscond if bail is granted to him. The circumstances have not changed and previous application came to be withdrawn only when this Court expressed after hearing extensive argument that bail cannot be granted.

12. In the result, application stands rejected. The Trial Court is expected to expedite the matter and in any case, dispose of the matter within nine months from the date of receipt of the order.

[T.V. NALAWADE, J.]

ssc/