

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [BA] No.608 of 2016

(Bhupendra @ Golu s/o Suryakant Borkar

vs.

State of Maharashtra, through P.S.O. Ajni, Nagpur)

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Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

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Court's or Judge's Orders

*Shri S.P. Dharmadhikari, Senior Advocate along with
Shri U.P. Dable, Advocate for the Applicant.
Shri T.A. Mirza, A.P.P. for the Non-Applicant/State.*

CORAM : S.B. SHUKRE, J.

DATE : 19th AUGUST, 2016.

Heard the learned Senior Counsel for the
applicant and the learned A.P.P. for the State.

The allegation is that the present applicant along with other accused persons, being a member of an organized crime syndicate, jointly made assault upon the complainant-Amol Mehar on 29/05/2015, in which assault, the complainant suffered some injuries but managed to survive those injuries. On the basis of complaint lodged by Amol Mehar, initially offences punishable under Sections 307, 143, 144, 147, 148, 294 and 427 read with Section 149 of the Indian Penal Code and also under Sections 3, 4, 25 and 27 of the Arms Act were registered. Later on, the provisions of the Maharashtra Control of Organised Crime Act, 1999 (for short 'the MCOC Act') were also invoked. Accordingly, the offence punishable under Section 3(4) of the MCOC Act came to be additionally registered against this applicant and other members of the crime syndicate.

Learned Senior Counsel for the applicant has invited my attention to the view taken by this Court in the order passed on 7th July, 2016 in Criminal Application (BA) No.424/2016 in the matter of *Dinesh Bhondulal Baisware vs. State of Maharashtra* that for denying relief of bail to a person accused of an offence punishable under the provisions of the MCOC Act, not only there should be demonstrated existence of *prima facie* case, but also should be shown that there is a reasonable possibility of the applicant committing similar crime. In this order, it is also held by this Court that for determining the possibility of the applicant committing a similar crime, Court may examine the nature of offences previously registered and if it is found that there is some nexus between those offences and the present offence, it would possibly show the inclination of the accused to committing similar crime, if released on bail. It is further held that for ascertaining existence of such a nexus involvement of the applicant along with some of his present co-accused in previously registered crime is a relevant factor. This view was taken by following the law laid down by the Hon'ble Apex Court in the case of *Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra and another*, reported in *AIR 2005 SC 2277 (1)*. Now, the learned Senior Counsel for the applicant submits that this view can be supplemented by following the ratio of another judgment of Hon'ble Apex Court in the case of *State of Maharashtra vs. Bharat Shantilal Shah and others*, reported in *(2008) 13 SCC 5*. He submits that in this case, Hon'ble Apex Court has held that the offences, which do not look to be common to those under the MCOC

Act, would not be relevant for the purpose of denying the relief of bail. He further submits that the reply of the prosecution does not show that previously registered offences have anything in common with the offences registered in the present crime. According to him, if such is the case, there would be no reason for this Court to reject this application.

The learned A.P.P. for the State submits that it may be true that previously registered offences may not have any commonality with the offences presently registered, but the gravity of the offences and the overall conduct of the applicant needs to be taken into consideration and if it is so considered, it would be found that this applicant has a tendency to continue to commit offences including graver offences. He submits that viewed this way, it would have to be found that this applicant satisfies the criteria of his committing similar offences, if released on bail.

On going through the judgment rendered in the case of *Bharat Shantilal Shah (supra)*, I find that the Hon'ble Apex Court has in no uncertain terms laid down that for considering the grant of bail or otherwise to a person accused of an offence punishable under the provisions of the MCOC Act, one of the important criteria is the possibility of committing a similar offence and that this criteria cannot be examined on the touchstone of mere registration of the offences in the past. The Hon'ble Apex Court has held that the offences previously registered must have something in common with those under the MCOC

Act. The relevant observations of the Hon'ble Apex Court as they appear in paragraph 64 are reproduced as under:

“64. We consider that a person who is on bail after being arrested for violation of law unconnected with MCOCA, should not be denied his right to seek bail if he is arrested under MCOCA, for it cannot be said that he is a habitual offender. The provision of denying his right to seek bail, if he was arrested earlier and was on bail for commission of an offence under any other Act, suffers from the vice of unreasonable classification by placing in the same class, offences which may have nothing in common with those under MCOCA, for the purpose of denying consideration of bail. The aforesaid expression and restriction on the right of seeking bail is not even in consonance with the object sought to be achieved by the Act and, therefore, on the face of the provisions this is an excessive restriction.”

It would be obvious from the law laid down by the Hon'ble Apex Court that the nexus between the previous offences and the present crime can be seen not only on the basis of some of the co-accused also being involved with the applicant in the previous offences, but also in the light of commonality between the previously registered offences and the present crime.

In the instant case, it can be seen from the crime chart reproduced in the reply of the prosecution that there

were five crimes previously registered against the present applicant and out of these five crimes, at least in three crimes, some of the co-accused including the leader of the crime syndicate Virendra alias Gijrya Lonare were involved along with the applicant. The involvement of some of the present co-accused of the applicant also in the previous crime is one of the criteria for considering the possibility of the applicant committing similar offence, as held by this Court in the case of *Dinesh Bhondulal Baisware (supra)*. Now, drawing further guidance from the law laid down by the Hon'ble Apex Court in the case of *Bharat Shantilal Shah*, which case was not cited earlier and so was not considered previously by this Court, it has also to be held that previously registered offences must have some commonness with the offences registered in the present crime. If they do not bear any similarity or commonality to the present crime, they could not be taken into consideration for denying the relief of bail or otherwise the classification notionally made by putting previous offences in the same class as the present crime, as held by the Hon'ble Supreme Court, would suffer from the vice of unreasonableness.

From the crime chart, I find that in all the five crimes namely Crime Nos.330/2009, 27/2011, 161/2012, 280/2012 and 4611/2012, no offence punishable under Section 307 of the Indian Penal Code was involved and apparently all the offences except the one punishable under Section 364 of the Indian Penal Code appeared to be lesser offences committed under various sections of the Indian

Penal Code. It is also seen that barring the offence punishable under Section 364 of the Indian Penal Code, the maximum punishment for all these offences was of three years and for the offence punishable under Section 364 of the Indian Penal Code, this applicant has been acquitted. This would show that these offences were neither grave nor had anything in common with the main offence presently registered against the applicant. It would then follow that the applicant could not be reasonably said to be having a tendency to commit similar offence, if released on bail.

As regards *prima facie* case, I find that even though there is an allegation made in the F.I.R. that this applicant fired shots at the complainant, the entry taken in the wireless register at 23:58 hours of 28/05/2015 discloses that shots were fired in the air. The injury report discloses that the complainant sustained only one injury in the nature of an abrasion caused by a blunt object. So, even on this criteria, I must say, the evidence of the prosecution so far collected is *prima facie* disappointing.

In the result, I am inclined to grant this application and it is granted accordingly.

It is directed that the applicant be released on bail on his furnishing a P.R. Bond in the sum of Rs.25,000/- together with two solvent sureties in the like sum on the following conditions :

- i. the applicant shall reside in Gondia till the trial is over at the address to be furnished by him and till that time shall not enter the city limits of

Nagpur except on the dates which are fixed for his attendance in the case filed against him;

- ii. the applicant shall, within three days of his release, submit his detailed address together with telephone numbers to the City Police Station, Gondia and also to the Court;
- iii. the applicant shall not tamper with the prosecution witnesses;
- iv. the applicant shall regularly attend the dates fixed by the Court in his case, unless exempted in accordance with law; and
- v. the applicant shall cooperate with the Court in expeditious disposal of the case.

JUDGE

*sdw

C E R T I F I C A T E

I certify that this order uploaded is a true and correct copy of the original signed order.

Uploaded by: S.D. Waghmare
P.A. to the Hon'ble Judge.

Uploaded on : 22/08/2016