

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH, NAGPUR.****CRIMINAL APPLICATION (BA) NO.691/2015**

Ganesh @ Goldi Janmojay Kute ..vs.. State of Maharashtra, through PSO P. S.
Nandanvan, Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. D. V. Chavan, Advocate for applicant.

Mr. Bangadkar, A.P.P. for non applicant-State.

CORAM : A. B. CHAUDHARI, J.

DATE : JANUARY 28, 2016

Heard learned counsel for the rival parties.

Perused the impugned order dated 02.06.2015 passed by Special Judge, M.C.O.C. Act and Additional Sessions Judge-5, Nagpur rejecting the application filed by the present applicant along with other applicants. The trial Judge rejected the application for bail of the present applicant along with others considering the applicability of Section 3 of the Maharashtra Control of Organized Crimes Act (MCOCA) about which there was approval and sanction for filing the charge sheet by the competent authority.

The trial Judge rejected the application for bail of the present applicant also on merits for the offence punishable under Sections 302, 307, 120-B, 201, 143, 148, 149 and 506 of the IPC read with Section 4,25 of the Arms Act, Section 135 of the Maharashtra police Act but then the other applicants

before him have had to their credit criminal records and charge-sheets but the said criterion should not have been mechanically applied for prima facie brining the present applicant under Section (3) of the MCOCA for the purpose of bail plea.

This Court has heard the present application on a few occasions.

The only material placed before me by both the sides insofar as the present applicant is concerned, is that the charge-sheet is of the year 2012 for an offence punishable under section 324, 326 of the IPC in relation to his role in committing the said offences with some other persons than the persons in the present organized syndicate led by Jagdish. Therefore, to say that the present applicant is a member of the organized syndicate run by Jagdish would be prima facie incorrect. Therefore, it is difficult to correlate the said crime and the charge-sheet under Section 324, 325, 326 and 34 IPC etc. in Crime No.108/2012 with the present crime and then apply MCOCA. Alike other accused persons, insofar the present applicant is concerned, there is no other charge-sheet with the organised syndicate led by Jagdish. Therefore, in my opinion, prima facie in case of applicant MCOCA cannot be applied. It is true that the present offences undoubtedly reveal triple murder as contended by the prosecution but

then the application for bail made by the present applicant was rejected along with the other accused persons with the applicability of Section 3 of the MCOCA. In my opinion, now the appropriate course for this court would be to ask the learned trial Judge to reconsider the bail application of the present applicant afresh on its own merit bereft of Section 3 of the MCOCA.

In that view of the matter, following order is passed.

ORDER

Criminal Application No.691/2015 is disposed of, with liberty reserved in favour of the present applicant-Ganesh@ Goldi Janmojay Kute to apply for bail in Crime No.239/2014 registered with Police Station, Nandavan, Dist. Nagpur for an offence punishable under Sections 302, 307, 120-B, 201, 143, 148, 149 and 506 of the IPC read with Section 4,25 of the Arms Act, Section 135 of the Maharashtra Police Act. The trial Judge shall consider the application bereft of the provisions of the MCOCA, 1999, on its own merits. The observations in this order are only prima facie in nature for consideration of question for plea of bail.

JUDGE