

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

CRIMINAL APPLICATION NO.731 OF 2016

(Yogesh Singh s/o Vinodkumar Singh ..vs.. State of Maharashtra, through PSO, PS Gittikhadan,
Nagpur)

WITH

CRIMINAL APPLICATION NO.773 OF 2016

(Amit s/o Rajkumar Thakur ..vs.. State of Maharashtra, through PSO, PS Gittikhadan, Nagpur)

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

Court's or Judge's orders

Shri R.M. Daga, Advocate with Shri C.R. Thakur, Advocate for the
applicants,
Shri S.A. Ashirgade, Addl. PP for the non-applicant/State.

CORAM : P.N. DESHMUKH, J.

DATED : 30-11-2016

Both these applications are filed for grant of bail in Crime No.451/2015 registered for the offences punishable under Sections 143, 147, 149, 427, 323, 506(B), 504 and 297 of the Indian Penal Code and under Section 3(1(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 read with Section 184 of the Motor Vehicles Act. During the course of investigation, offence punishable under Section 3(1) of the Maharashtra Control of Organized Crime Act, 1999 (MCOC Act) came to be added. As both the applications are arising from the same crime, they are decided by the common order.

2. Heard learned Counsel for the respective

applicants and learned Additional Public Prosecutor for State .

3. It is the case of applicants that offences registered against them are all bailable except for offence punishable under Section 506(B) of the Indian Penal Code and thus on inviting attention to the contentions of the report lodged by Malhari Mhaske, it is submitted that since as per the said report, role attributed to both applicants is of co-accused Sumit Thakur causing damage to vehicles owned by the complainant and that both the applicants committed assault on complainant by kick blows and fist blows, due to which he sustained injuries in the nature of contusions, it is contended that, if the case of the applicants is considered without application of provision of the MCOC Act applied subsequently, both the applications are liable to be allowed.

4. Learned Counsel for the applicants with regard to application of Section 3(1) of the MCOC Act has contended that no such provisions can be applied as from the case of prosecution no ingredients as contemplated under Section 2(e) of the MCOC Act can said to be established as it is no case of prosecution that the applicants had any intention or object of gaining any pecuniary benefits, when they were indulged in the present crime. The learned Counsel for the applicants in

support of their applications and for application of provisions of MCOC Act, has relied upon the case of *State of Maharashtra vs. Shiva Alias Shivaji Ramaji Sonawane and others with State of Maharashtra and others vs. Mehmood Khan Yakub Khan Pathan and others* reported in (2015)14 SCC 272.

5. Further point canvassed is that in one of the crime being Crime No.363/2013 registered against the applicants for the offences punishable under Sections 363, 324, 506(B) and 504 read with Section 34 of the Indian Penal Code and under Section 3(1) of the MCOC Act, both the applicants are acquitted and no appeal is preferred against such acquittal. In view of the facts as aforesaid and the law relied at is submitted that applications be allowed.

6. Learned Additional Public Prosecutor has opposed both the applications on the lines of reply filed on record and has submitted that there is direct evidence against the applicants, of eyewitnesses who have attributed specific role to the applicants establishing fact of co-accused Sumit intentionally giving dash to vehicle of complainant and thereafter inviting quarrel with him. During the course of which, applicants at public place abused the complainant on caste basis. Both the applications are specifically opposed on the ground that prior to this incident, applicants are already involved in

the crimes wherein provisions of MCOC Act are applied and that the applicants are criminal elements having number of cases registered against them and also on the ground that in the event applicants are released on bail, there is possibility of threat to life of complainant in this crime and as such the applications are prayed to be rejected.

7. Having considered submissions as aforesaid as well as facts of the case, from the report is noted that same is lodged by Malhari Mhaske alleging that co-accused Sumit on 16-09-2015 intentionally gave dash to Bolero vehicle owned by the complainant and he thus, enquired about the same when he indulged into quarrel. It is further stated that Sumit then on making a phone call called other persons who arrived on the spot including applicant Amit and assaulted complainant on his chest, abdomen, back, head and also abused him on caste basis. Alongwith applicant, 10 to 12 other co-accused are stated to have accompanied them and four to five persons amongst them had damaged complainant's vehicle by means of iron rod.

8. So far as application of provisions of Section 3(1) of MCOC Act is concerned, on perusal of final report made available by learned Additional Public Prosecutor, it is noted that prior to present crime, in Crime No.363/2013 registered against the applicants for the

offences punishable under Sections 363, 324, 506(b) and 504 read with Section 34 of the Indian Penal Code and Section 3(1) of MCOC Act, applicants are acquitted by the Special Court on 30-11-2015. It is material to note that incident involved in that trial was of the year 2013, however there is no whisper in the case of prosecution of involvement of applicant in earlier crimes being Crime No.236/2008 and Crime No.79/2010 registered by Police Station Ambazari and Police Station Gittikhadan respectively.

9. So far as application of provisions of 3(1) of the MCOC Act in the present crime and the case of the applicants as aforesaid, it is necessary to consider definition of “organized crime” as contemplated under the said Act, which is reproduced as below :

Section 2(e) “Organised Crime” :

“Organised Crime” means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency;”

Plain reading of abovestated provision reveals that for the purpose of application of MCOC Act what is required is that the accused should have object of

gaining pecuniary benefits or gaining undue economic or any other advantage for himself or any other person or promoting insurgency.

Considering the facts involved in Crime No.236/2008 registered for the offence punishable under Section 324 read with Section 34 of the Indian penal Code, it is noted that involvement of applicant in said crime is by way of their indulging into a quarrel on trifle issue of giving dash to complainant's vehicle in the course of same transaction causing injury to complainant by stone and by fist blows.

Similarly, with reference to Crime No.79/2010 registered for the offences punishable under Sections 324, 504 and 506(B) read with Section 34 of the Indian Penal Code, the applicants involvement is with regard to their indulging into quarrel with the complainant who was proceeding towards his house and of committing assault by iron weapon and by fist blows.

Admittedly the applicants are acquitted of the earlier offence in Crime No.363/2013, wherein MCOC Act was applied and judgment in said trial has reached its finality as not challenged. Thus from neither of these crimes registered against the applicants, there appears any element or object of applicants for commission of said crimes for gaining any pecuniary advantage. It is thus noted that though applicants in the present crime, apart from provisions of the Indian Penal Code are

charged for the offence punishable under Section 3(1) of the MCOC Act, *prima facie* said provision does not appear to be attracted.

10. In the circumstances, learned Counsel for the applicants has relied upon the case of ***State of Maharashtra vs. Shiva Alias Shivaji Ramaji Sonawane and others*** referred Supra wherein the High Court upon relying on several earlier pronouncements on the subject, held that mere proof of filing of charge-sheets in the past was not enough to hold the persons accused in such charge-sheets to be guilty of the offences of committing organised crime punishable under Section 3 of the MCOC Act for such charge-sheets satisfy but one of the requirements under the said Act. What is according to the High Court equally important is to prove that the accused were guilty of committing the offence of organised crime by reason of their continuing unlawful activities. The High Court further held that any such unlawful activity should be by the use of threat of violence, intimidation, coercion or other unlawful means with the objective of “gaining pecuniary or other advantages” and that the provisions of MCOC Act can be invoked only by strictly complying with the provisions of Section 23 of the Act.

The appeal preferred against such acquittal was dismissed by the Hon'ble Apex Court observing that the

acquittal of the respondents in Crime No.37 and 38/2001 established that they were not involved in the commission of offence with which they were charged, which implied that the prosecution had failed to prove second ingredient required for completion of an offence under MCOC Act. It is noted thus that the High Court was, therefore, right in holding that Section 3 of MCOC Act could not be invoked only on the basis of the previous charge-sheets for Section 3 would come into play only if the respondents were proved to have committed an offence for gain or any pecuniary benefit or undue economic or other advantage after the promulgation of MCOC Act. As there was no such evidence available against the respondents, the High Court was justified in allowing the appeals thereby setting aside the order passed by the trial Court.

11. Having considered above regards to legal position together with facts involved in the present applications, particularly with regard to application of Section 3 of the MCOC Act, *prima facie* same is not found to be attracted in the present case, applications are thus liable to be allowed by imposing suitable conditions as per order below.

i) Applicant Amit s/o Rajkumar Thakur in Criminal Application (BA) No.773/2016 and applicant Yogeshkumar s/o Vinodkumar Singh in Criminal Application (BA) No.731/2016 shall be released on bail

on their executing P.R. Bond in the sum of Rs.50,000/- each with one surety each in the like amount.

ii) While on bail, applicants shall mark their presence with PSO Gittikhadan, Nagpur once in a week on Monday between 11-00 a.m. to 1-00 p.m. pending trial.

iii) Applicants shall not enter territorial jurisdiction of city of Nagpur except for marking their presence with Police Station. The learned Counsels for the applicants state that applicant-Amit s/o Rajkumar Thakur may be residing at Wardha while applicant Yogesh Singh s/o Vinodkumar Singh may be residing at Ballarshah, District Chandrapur, during pendency of trial.

Both the applications are accordingly allowed on above terms.

JUDGE