

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

CRIMINAL APPLICATION NO. 261 OF 2017

Suryakant @ Syresh s/o. Shriram Mule **....Applicant.**

Versus

The State of Maharashtra and Anr. **....Respondents.**

Mr. S.R. Chowkidar h/f. Mr. I.D. Maniyar, Advocate for applicant.
Mr. K.N. Lokhande, APP for respondents.

CORAM : T.V. NALAWADE, J.

DATED : 15th March, 2017.

ORDER :

1. The application is filed for bail by the accused against whom chargesheet is filed by Osmanpura Police Station, Aurangabad for offences punishable under sections 392, 458, 395 of Indian Penal Code and section 3 (1)(ii), 3 (2), 3 (4) of the Maharashtra Control of Organized Crimes Act, 1999 (hereinafter referred to as 'MCOC Act' for short). Both the sides are heard.

2. The incident took place on the night between 14.10.2015 and 15.10.2015. The complainant - Mishrilal, who is aged about 81 years, retired man is resident of Plot No. 66 situated near S.B.I. Bank, Dashmesh Nagar, Aurangabad. In the night time, when he heard some noise, he woke up and then he

noticed that some persons had entered his house. They gave threat of life to him and then they took away cash amount of more than Rs. one lakh, gold and silver ornaments. He had seen the faces of the persons, who were more than five in numbers and he reported the incident immediately to the concerned Police Station.

3. During the course of investigation, the present applicant came to be arrested. At his instance, muddemal property like silver pots and ornaments came to be recovered, one gold ring was also recovered and these articles were identified by the complainant. The complainant, however, could not identify the present applicant during test identification parade. The finger prints of the dacoits, who had entered in the house of complainant, were taken and finger prints of the applicant matched with the finger prints found in the house of the complainant. Thus, there is the evidence of aforesaid nature against the applicant and further, there is the chargesheet for offences punishable under MCOC Act.

4. The record produced and the submissions show that as against the present applicant as many as nine offences of similar nature, punishable under sections 457, 380, 395, 307 etc.

of Indian Penal Code are registered in Ambejogai City Police Station. Some cases are still pending in the Court and in one case bearing C.R. No. 148/11 registered in Ambajogai Rural Police Station, provisions of MCOC Act are used against the applicant. In view of the particular of offences, it can be said that after getting bail in similar cases, more offences are apparently committed of similar nature by the present applicant.

5. It was submitted for the applicant that the applicant came to be arrested on 22.11.2015 and the recovery under section 27 of the Evidence Act was made after about two months from the date of arrest. This circumstance cannot be considered at this stage and the effect of delay can be considered only during the trial when entire evidence is before the Trial Court.

6. The learned counsel submitted that in the past the provisions of MCOC Act were used against the applicant, but in that case the applicant got bail and now, it is not open to the State to again use the provisions of MCOC Act against the applicant. This submission is not at all acceptable. If the conditions laid down in section 3 of MCOC Act are fulfilled, then every time the provisions of MCOC Act can be used against such person. The provisions of section 21 (4) and (5) of MCOC Act

show that bar is created to grant bail in such a case. The aforesaid circumstances like registration of many similar crimes and commission of the crimes after getting released on bail in previous case show that there is clear possibility that the applicant will commit similar offence while on bail if the bail is granted to him. As many cases are already pending, it can be said that he committed present offences while on bail in other cases. In view of these provisions, this Court holds that it is not possible to grant bail to the applicant.

7. The learned counsel for the applicant submitted that even after one and half years of the filing of the case, no progress is made in the case. This circumstance cannot be used in the case like present one. At present, there are two Special Judges appointed for trial of the cases under aforesaid Special Enactment and the present case will be expeditiously disposed of.

8. The learned counsel for the applicant submitted that to other two accused from the present matter, bail is granted. The facts of the cases of those accused are different as only cash amount was recovered and the cash has no identity in view of the record of the present matter. However, from the present

applicant, the ornaments and also pots are recovered and they are identified by the original complainant. There is more evidence like finding of finger prints of the applicant in the house of complainant and location record and call details in respect of mobile of the applicant. This record is also sufficient to make out the case for the offences under the aforesaid Special Enactment. The submissions made by the learned counsel for the applicant that different accused were involved in different cases and so, the provisions cannot be made applicable cannot be considered at this stage. There is the record to show that these accused were in contact with each other and in many offences some were together. For the illustrations, it can be said that present applicant and Pandurang Kachare were together in C.R. No. 12/11 registered in Ambejogai Rural Police Station, present applicant and Rajendra Kalse were together in C.R.No. 151/11 registered in Ambejogai City Police Station, present applicant and the same Kalse were together in C.R. No. 148/11 registered in Ambejogai Rural Police Station. Kachare was also accused in C.R. No. 148/11. There are many such cases, but these illustrations are sufficient to show that provisions of Special Enactment are applicable. Nine crimes were committed when chargesheets were filed from the year 2008 till the year 2015. So there is no scope to say that the the provisions of the aforesaid

Special Enactment cannot be used against the present applicant.

9. The learned counsel for the applicant placed reliance on the observations made in following reported cases :-

(i) 2015 (3) Bom.C.R. (Cri) 704 [Mujahid Ibrahim Pathan and Ors. Vs. State of Maharashtra and Ors.],

(ii) 2014 (3) Bom.C.R. (Cri) 774 [Sachin Bansilal Ghaiwal Vs. State of Maharashtra],

(iii) 2007 (1) Bom.C.R. (Cri) 15 [State of Maharashtra Vs. Bharat Baburao Gavhane],

(iv) 2007 (1) Bom.C.R. (Cri) 26 [Sherbahadur Akram Khan and Ors. Vs. State of Maharashtra],

(v) 2014 DGLS (SC) 294 [Mahipal Singh Vs. C.B.I. and Anr.].

The relevant facts of the present matter are already quoted and they are sufficient to show that provisions of MCOC Act can be safely used against the present applicant. In the result, the application stands rejected.

[T.V. NALAWADE, J.]

ssc/