

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 549 OF 2019

Jitendra Balu Lokhande ...Applicant

V/s.

The State of Maharashtra ...Respondent

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Mr. Aniket Nikam i/b Aashish Satpute, Advocate for the Applicant.

Mr. S.H. Yadav, APP for the State-Respondent.

Mr. V.D.Mane, Police Head Constable, Miraj Rural Police Station,
District:Sangli, present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 11th November 2019

PC :

1. The Applicant is seeking his release on bail in connection with MCOC Case No. 4 of 2017 pending before the Special Court, Pune, under The Maharashtra Control of Organised Crime Act, 1999 (for short 'MCOC Act'). The applicant is facing charges under sections 394, 504, 506, 427, 323 r/w. 34 of the Indian Penal Code and U/s. 3(1)(ii), 3(2), 3(4) of MCOC Act.

2. The FIR is lodged by one Dattatraya Mane on 02/09/2016 vide C.R. No. 263 of 2016. The applicant was arrested on 03/09/2016 and since then he is in custody. The investigation is over and the charge sheet is filed.

3. The first informant in his FIR has stated that in the previous

year he had bought sand worth Rs.20000/- from one Abhiman @ Balu Mane. He had paid Rs.10000/- and in lieu of balance amount of Rs.10000/- the informant had supplied angle for truck carrier. According to the informant, the transaction was settled. On 02/09/2016 at about 1.00 p.m. the informant was having tea at the tea stall near Tasgaon diversion. At that time, Abhiman @ Balu Mane came there. He started demanding balance amount towards sale of sand. The informant told him that he had paid everything and there were no dues. Abhiman got angry. He threatened that informant would be killed. He made a phone call and within short time, his driver Jitendra Lokhande came there in four wheeler. It is alleged that the applicant and one Parshuram Lokhande were in the four wheeler. They got down. Abhiman told them to assault the informant. Thereafter Jitendra Lokhande and Parshuram Lokhande started assaulting the informant with wooden sticks. Bhima Nandiwale and Balu Mane assaulted him with kicks and fist blows. Balu Mane took Rs.2700/- and mobile phone from complainants' pocket. Thereafter, they went away.

4. The charge-sheet contains injury certificate in respect of injuries suffered by the first informant. He had suffered tenderness and contusion. Those injuries were absolutely minor. The charge-sheet contains statements of some eye

witnesses. One Ashok Jadhav had seen the incident. He has described the incident in the same fashion as narrated by the first informant in his FIR, however, except accused Balu Mane, he was not knowing the other three accused. The applicant was put in Test Identification Parade and this witness Ashok had identified him. The other witness Rohan Kamble had seen the incident when the assault had already started. He had also identified the applicant, but this witness had not seen the genesis of the incident. The other eye witnesses were not knowing the assailants except Balu. The confessional statement of Bhimrao Nandiwale was recorded, it was exculpatory in nature. The organised crime syndicate was allegedly led by Abhiman @ Balu Mane. There are cases pending against him. The applicant reached spot after call was made by accused Abhiman. There is nothing to show that applicant had knowledge of alleged transaction.

5. The co-accused Bhimrao Nandiwale was granted bail by this Court in Bail Application No. 485 of 2019 vide order dated 18th October, 2019. The Court while considering the said application has observed that there were no antecedents against the said applicant and there was no reason to believe that he was involved in continuous unlawful activity. There are no criminal antecedent against applicant. The affidavit in reply filed by the prosecution

would only indicate that chapter case proceeding were initiated against applicant under Section 107 of Code of Criminal Procedure.

6. Similar proceeding was also initiated against co-accused who was granted bail by this Court. Learned App submitted that the distinguishing feature as far as the applicant is concerned is he was attributed the role assaulting the injured by using stick; and that there is a recovery of cash of Rs. 1,200/- from the applicant. It is pertinent to note that the cash amount involved in this case was Rs. 2,700/-. Recovery of amount of Rs.1,200/- cannot be considered as a strong circumstance to invoke provisions of MCOC Act against the applicant. Although the role of assault by stick has been attributed to the applicant, the other circumstances and observations made in the order granting bail to the co-accused are clearly applicable in the case of the present applicant. Undisputedly no confessional statement of the applicant has been recorded under Section 18 of MCOC Act. The statements of the witnesses do not establish that the applicant has in any manner help the main accused in continuing unlawful activities. In the light of the aforesaid circumstances the bar under Section 21(4), of the MCOC Act will not operate against the applicant. Hence, the applicant deserves to be released on bail.

ORDER

1. Criminal Bail Application No. 549 of 2019 is allowed and

disposed of;

2. The applicant is directed to be released on bail in connection with MCOC Case No. 4 of 2017 pending before the MCOC Special Court Pune, on furnishing PR. bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.
3. The applicant shall report concerned Police Station once in a month on every first Saturday between 10 am to 12 pm. till further orders;

(PRAKASH D. NAIK, J.)