

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 201 OF 2018

Dada @ Pravin Bhalchandra Wani ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Ashok M. Mundargi, Senior Counsel I/by Mandar M. Goswami for Applicant.

Ms. J. S. Lohokare, APP for Respondent – State.

R. V. Kanhere, Police Constable, Pimpri Police Station, Pune present in Court.

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 14, 2019.

P.C. :

. The Applicant – Accused No.16 is seeking regular bail in Crime No. I-36 of 2017 registered at MIDC Police Station, Ahmednagar for an offence punishable under Sections 304, 328 read with Section 34 of the Indian Penal Code; Sections 65(k)(kh)(g)(gh)(d)(ch), 68(k)(kh) and 80(1)(2) of Maharashtra Prohibition Act; and Sections 3(1)(i)(ii), 3(2), 3(4) & 4 of Maharashtra Control of Organized Crime Act, 1999 (hereinafter be referred to as 'MCOCA Act' for the sake of brevity).

2. On 14th February 2017 the contesting candidates of Zilla Parishad and Panchayat Samiti election hosted a party in which country liquor served was since poisonous has resulted into death of certain persons and seriously injuring few of them.

3. The allegation against the present Applicant is, the Accused No.13 – Bharat Ramesh Joshi who has brewed the poisonous liquor has purchased the Spirit from the Applicant. The act of brewing was carried out in a Canteen of Civil Hospital, Ahmednagar.

4. In the aforesaid background, submissions of Mr. Mundargi, the learned Senior Counsel are, Applicant is neither the manufacturer nor the dealer of poisonous liquor. There is no direct evidence to connect the Applicant to the crime in question even though it is presumed that the Applicant is usually dealing with Methyle and Ethyle Alcohol. It is further claimed that the necessary ingredients of the provisions of MCOC Act are not satisfied, as this is the only offence against the Applicant demonstrating involvement with other co-accused. It is clarified that there might be some other offences, but the other co-accused in this crime are not co-accused therein.

5. It is further claimed that the confessional statement of Accused No.7 Mohan Duggal and Accused No.11 Sonu alias Sandip Duggal cannot be relied upon, as Accused No.7 Mohan Duggal has expired whereas the confessional statement of Accused No.11 Sonu recorded under Section 18 of the MCOC Act does not appear to be after following due process as prescribed under the said provisions, as neither the statement of the said Accused recorded by the Magistrate is placed on record nor the signature of Accused appears to have been obtained before the Superintendent of Police who has recorded confessional statement. It is further claimed that the alleged discovery at the behest of the other co-accused cannot be considered against the present Applicant. As such, a prayer for bail is pressed.

6. The learned APP submits that pursuant to the provisions of sub-section 4 of Section 21 what is required to be appreciated is, are there any reasonable ground so as to infer that the Applicant – Accused is not *prima facie* guilty of the offence alleged. Reliance is placed on C. A. Report and confessional statement of Accused No.11 Sonu. A claim is made that whether the confessional statements are recorded by violating the rules

and regulations cannot be gone into at this stage. It is claimed that the present Applicant has played major role in supplying the Spirit for which the Applicant does not hold any valid license under the provisions of Maharashtra Prohibition Act. As such, rejection is sought.

7. Having considered rival submissions and having appreciated the investigation carried out, as is reflected in the chargesheet, what is brought on record is, death of 9 people and another 13 getting seriously injured. The Accused No. 20 – Sujeetsingh in a Public Health Hospital Canteen at Ahmednagar with the help of other accused persons appears to have indulged into the act of brewing poisonous liquor. The record depicts that the said canteen was managed by the Accused No.7 Mohan Duggal and Accused No.11 Sonu @ Sandip Duggal. Accused No.13 Bharat Joshi used to brew the same being an expert, whereas the same was transported in a jeep owned by the present Applicant. In the wake of recovery of jeep in question, the provisions of section 22 of the MCOC Act will come into play and same will be considered to be detriment of the Applicant, as there is a presumption against the Applicant. The Postmortem Report and

C. A. Report clearly demonstrates the excess quantity of Methyl and Ethyl were found in the viscera of deceased persons.

8. Upon overall appreciation of the investigation and the evidence brought on record, it is *prima facie* demonstrated that there is an organized crime syndicate and the crime has been committed by the members of the said organized crime syndicate. The fact that the role played by each of the Accused was independently investigated and such role by each of the Accused is linked in a chain manner so as to infer the commission of offence by a syndicate can be very well established and inferred through the material available on record. Considering the role attributed to the Applicant of supplying the Spirit and Methyl which was used in brewing poisonous liquor, has rightly prompted the investigating agency to chargesheet the Applicant.

9. As far as the contention as regards non-admissibility of the confessional statement of Accused No.11 Sonu is concerned, the same cannot be gone into at the trial stage. However, the material available on record *prima facie* does not indicate this Court to form an opinion that the Applicant is being falsely and incorrectly involved in the offence in

question. Non-recording of confessional statement of Accused No. 13 Bharat Joshi who claimed to have brewed the poisonous liquor will be hardly of any consequences *qua* the claim for bail, as there is sufficient recovery at the behest of said accused person and as such presumption at this stage can be drawn under Section 22 of the MCOC Act. That being so, no case for grant of bail is made out.

10. As such the present Bail Application fails. Hence the same stands rejected.

(NITIN W. SAMBRE, J.)