

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

CRIMINAL BAIL APPLICATION NO. 370 OF 2019

Vishal @ Kiran Sunil Gaikwad	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Satyavrat Joshi, Advocate for the Applicant.
Ms. S. S. Kaushik, APP for the State/Respondent.
Mr. Dilip Desai, PSI, Vadgaon Maval police station, present.

CORAM : SARANG V. KOTWAL, J.
DATE : 27th SEPTEMBER, 2019

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 189 of 2017 registered with Vadgaon Maval Police Station, Pune, under sections 399, 402 and 332 r/w. 34 of the Indian Penal Code and U/s. 4 r/w. 27 of the Indian Arms Act.

2. The FIR is lodged on 04/11/2017 by Police Naik Manoj Kadam. He has stated in his FIR that, while they were on patrolling duty, they received a secret information that some persons were planning to commit dacoity. They were present in Shivaji Chowk, near the house of one Advocate Ovhal. The first informant and

other police staff went there. They saw those five persons. After they saw police officers, those persons tried to run away from the spot. Two of them could be apprehended at the spot and three of them were successful in escaping in the darkness. The persons who were apprehended were searched and they were found in possession of Sword, Chilly powder, plier and mobile phone. On this basis, the FIR is lodged. The applicant was arrested on 04/11/2017 at about 7.30p.m. It is the prosecution case that the applicant was one of the persons who had escaped from the spot. During the course of investigation provisions of Maharashtra Control of Organized Crimes Act ('MCOC Act' for short) were applied and Section 3(i)(ii) and 3(4) of the MCOC Act were added. The approval shows that the applicant did not have any criminal antecedents against his name at all, though, the other four accused had many antecedents. The organized crime syndicate allegedly was led by Vikas @ Vicky Ankush Bhise and there were offences registered against him since year 2012 and in some of the offences he was acquitted. The investigation was carried out and the charge-sheet was filed.

3. Heard Shri. Satyavrat Joshi, learned counsel for the applicant and Ms. S. S. Kaushik, learned APP for the State.

4. Shri. Joshi submitted that there is hardly any evidence against the present applicant. No test identification parade was held to enable the police officers to identify the applicant. Nothing incriminating was recovered at his instance. The only connecting piece of evidence the investigating agency was relying on was the recovery of motorcycle from the spot, which was registered in the name of mother of the applicant. He submitted that, that circumstance by itself cannot connect the applicant with the alleged crime. There was nothing to show that the applicant was planning to commit dacoity. None of the sections alleged against him are made out in the entire investigation carried out.

5. Learned APP opposed this applicant on the ground that the offences of MCOC Act are applied and, therefore, there is a bar U/s.21(4) of the MCOC Act in granting bail to the applicant.

6. I have considered all these submissions. As rightly submitted by the learned counsel for the applicant, test identification parade is not held to enable any of the police officers

to identify the applicant. Besides police officers, the charge-sheet contains statement of one eye witness who had seen three persons escaping from the spot and two apprehended on the spot. Even he was not made to identify the applicant. Therefore, identity of the applicant is not established. The applicant was arrested after more than 12 hours. The only circumstance which is worth mentioning is about finding of motorcycle at the spot from where three persons had escaped. In that context, statement of the applicant's mother is important. The statement of the applicant's mother shows that, that particular motorcycle bearing registration No.MH14/EF-2679 was registered in her name and it was being used by her sons. She had three sons Santosh, Amol and Kiran. Therefore, that statement shows that the motorcycle was not exclusively used by the applicant. Therefore, even this circumstance cannot be held as an incriminating circumstance against the applicant.

7. Considering these factors, the complicity of the present applicant is not shown from the charge-sheet. Therefore, at this stage, it cannot be said that he had committed any act which

amounted to continuation of unlawful activity of an organized crime syndicate. Therefore, considering these weak circumstances against him, it can safely be recorded that the applicant does not appear to have committed offence under MCOC Act. Considering the fact that he does not have criminal antecedents, it is unlikely that he will commit similar offence under MCOC Act. Though, ofcourse this cannot be recorded with absolute certainty in any cases.

8. In view of the above discussion, the applicant is entitled for his release on bail during the pendency of the trial.

9. Hence, the following order :

ORDER

- (i) In connection with C.R. No. 189 of 2017 registered with Vadgaon Maval Police Station, Pune, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)