

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

BAIL APPLICATION NO. 425 OF 2019.

Sanket Sunil Hole ...Applicant

Versus

The State of Maharashtra ...Respondent

.....

Mr. Karl. Rustomkhan, Advocate for the Applicant.

Smt. A. A. Takalkar, APP for the State-Respondent.

.....

CORAM : PRAKASH D. NAIK, J.

DATE : 6th December, 2019

PC :

1. This is an application for Bail in connection with C.R. No. 211 of 2017 registered with Paud Police Station for offences punishable under Sections 307, 387, 115, 504, 506 r/w Section 34 of Indian Penal Code ("IPC" for short) and Section 4, 25 & 27 of the Arms Act, 37(1)(3) of the Maharashtra Police Act. Subsequently, provisions of Maharashtra Control of Organized Crime Act 1999 ("MCOC Act" for short) were invoked under Sections 3(1)(ii) and 3(4).
2. The applicant was arrested on 21st June, 2017.
3. The brief facts of the prosecution case are as follows :

The complainant was approached by accused Sunny Gole at

his residence on 16th May, 2017 and he was informed that he has been called by Mayur Gole and if he does not come, then he would be taken forcibly. The complainant and his father visited the house of Mayur Gole. They were told by Mayur Gole that is just released from jail and they should pay extortion amount of Rs.5 lakhs or purchase the flat in his name and if he does not do so then he would not be spared. The complainant informed him that he is not in a position to arrange the amount. At that time the other accused Sunny Gole, Sandip Ganpat Kumbhar, Sanket Nikte, Ajay Gole and Kamlesh Pawle were also present. Subsequently, Sunny Gole called the complainant on several occasions. On 20th June, 2017, when the complainant returned home, his father informed him that accused Mayur Gole, Sunny Gole, Sandip Kumbhar and Sanket Nikte had visited his residence at about 5.00 p.m. and they were inquiring about complainant. At about 11.00 p.m. Sunny Gole and Sambhaji Kumbhar came to his residence. Sunny informed him that Mayur Gole had demanded the amount immediately otherwise would be killed. Sunny Gole took out the sickle and pointed the same at his neck and threatened him. Kamlesh Pawale, Sanket Nikte and Ajay Gole who were associates of Sunny Gole assaulted him with wooden sticks and when he tried to run to save himself, Sunny Gole tried to give blow on his neck with sickle. Thereafter, the FIR was lodged on

21st June, 2017. On the same day the applicant was arrested and since then he is in custody. The statement of witnesses were recorded subsequently proposal was forwarded invoking the provisions of MCOC Act. Approval was granted under Section 23(1) of MCOC Act. Investigation was conducted under the provisions of said Act. The confessional statements of two accused were recorded under Section 18 of MCOC Act. On completing investigation, charge-sheet is filed.

4. The applicant preferred application for bail before the Special Court of MCOC which was rejected on 29th November, 2018.

5. Learned advocate for the applicant submitted that the applicant has been implicated in this case by way of mistaken identity. The complaint wrongly refers to the accused as Sanket Nikte whereas the correct name of the applicant as Sanket Hole. He pointed out statement of witness Pramod Nikte mentions that he is residing with his brother Sanket Nikte in the Pirangut area. Thus the applicant is not the same person who was involved in the crime. It is further submitted that the only role that was ascribed to the applicant is assault by wooden log. The complainant did not suffer any serious injuries. The applicant is in custody since two and half years. It is submitted that there is no material to invoke provisions of MCOC Act against the applicant. The applicant is not member of crime syndicate. He was not involved in continuing unlawful activity

along with the alleged gang leader. Thus, at the most the applicant can be prosecuted only for the offences for which the FIR was registered. It is submitted that the confessional statement of the co-accused do not establish the requirement of the provisions of MCOC Act. No case is registered against the applicant along with gang leader Mayur Gole. He has not participated in any crime with him. He cannot be treated as member of gang headed by Mayur to invoke the provisions of MCOC Act. The offence under Section 307 of IPC is not attracted in this case and the applicant may be released on bail.

6. Learned APP submitted that the accused were involved in serious offence. The gang leader Mayur Gole is involved in several cases. He was released from jail and he threatened complainant. The applicant is involved in earlier case which is pending in the Court. The confessional statements of the co-accused indicates the involvement of the applicant in this crime which is sufficient to invoke the provisions of MCOC Act. The co-accused have stated that Mayur Gole is released on bail, all the accused are together. Mayur Gole is released before two months. in The present crime was committed along with gang leader Mayur Gole which shows his proximity with him. The prosecution has also filed the affidavit to oppose the grant of bail. The affidavit refers to the criminal antecedents of Mayur Gole. It is submitted that Mayur is history

sheeter and he is managing the gang which is involved in extortion. The complainant was threatened to part with the amount. Hence, there is sufficient evidence against the applicant to invoke the provision of MCOC Act. There are eye witnesses to substantiate that the applicant is involved in the crime, hence, bail may not be granted.

7. Perused the charge-sheet and affidavit filed by the prosecution. The FIR was lodged on 21st June, 2017. According to complainant on 16th May, 2017 he was threatened, subsequently threat was issued on 20th June 2017, i.e. one month after the first incident. He was assaulted. The applicant was attributed the role of assaulting by wooden log. The co-accused Sunny was a juvenile and was attributed role of assaulting by sickle. The amount was not parted. On account of the incident of assault dated 20th June 2017, FIR was lodged. The victim has sustained some injuries on account of the assault. On perusal of the Injury Certificate it is apparent that he has sustained contusions over legs below knee, contusion and abrasion over arm. It is doubtful whether Section 307 would be attributed in this case.

8. The record do not indicates that the applicant is involved in any other case along with gang leader. The applicant is having one antecedent. The applicant was on bail. Gang leader is not accused in the said case. There is no other cogent material to show that the

applicant has participated in any crime except present case with Mayur Gole.

9. C.R. No. 13 of 2015 is pending against applicant for trial. The said case is relates to assault upon thief caught by general public who assaulted him which had resulted into death. There is no recovery from the applicant. It is pertinent to note that the prosecution has not relied upon any previous charge-sheet against the applicant to show his link with the gang leader. There is no evidence to suggest that the applicant is in continuous unlawful activities as defined under Section 2(d) of the MCOC Act or that he has committed offence of organized crime as defined under Section 2(e) of the said Act. There is no evidence to suggest that he is member of any organized crime has defined under Section 2(f) of the said Act. Thus, except the present case, there is no other case against the applicant along with gang leader. The confessional statements of the co-accused also refers to the present case. However, there is no cogent evidence to establish that the applicant was continuously indulging in unlawful activities as a member of crime syndicate.

10. In the light of the aforesaid circumstances, the bar envisaged under Section 21(4) of the MCOC Act, would not be an impediment in granting bail to the applicant.

ORDER

- i) Bail Application No. 425 of 2019 of is allowed;
- ii) The applicant is directed to be released on bail in connection with C.R. No. 211 of 2017 registered with Paud Police Station, which is subject matter of MCOC Sessions Case No. 27 of 2017 pending before the MCOC Special Court Pune, on his furnishing P.R. bond in the sum of Rs. 25,000/- with one or more sureties in the like amount;
- iii) The applicant shall stay out of the jurisdiction of Paud Police Station till conclusion of trial.
- iv) The applicant shall furnish the details of his residence after he is released on bail. He shall attend the nearest Police Station, from place of his residence and report once in a month on every first Saturday between 10.00 a.m. to 12.00 noon till conclusion of trail.
- v) The applicant shall not tamper with the evidence;
- vi) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)