

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

CRIMINAL BAIL APPLICATION NO. 485 OF 2019

Bhimrav Tamanna Nandiwale	 Applicant
Versus	
The State of Maharashtra	 Respondent

Shri. Mundargi, Senior counsel i/b. Omkar G. Nagwekar, for the Applicant.

Ms. S. S. Kaushik, APP for the State/Respondent.

Mr. V. D. Mane, PHC-519, Miraj Gramin police station, present.

CORAM :SARANG V. KOTWAL, J.

DATE :18th OCTOBER, 2019

P.C. :

1. The Applicant is seeking his release on bail in connection with MCOC Case No.04 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. 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 he had bought sand worth Rs.20000/- from one Abhiman @ Balu Mane one year before lodging FIR. He had paid Rs.10000/- and for the balance amount of Rs.10000/- the informant had supplied some material for the Abhiman's truck. According to the informant, the transaction was over. On 02/09/2016 at about 1.00p.m. the informant was having tea at the tea stall near Tasgaon diversion. At that time, the aforesaid Abhiman @ Balu Mane came there. He started demanding balance amount. The informant told him that he had paid everything and there were no dues. Abhiman got angry. He threatened to kill him. He made a phone call and within a short time, Abhiman's driver Jitendra Lokhande came there in a four wheeler. It is alleged that the applicant and one Parshuram Lokhande were in that 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. The applicant and Balu @ Abhiman assaulted him

with kicks and fist blows. Balu removed Rs.2700/- and mobile phone from his pocket. Thereafter they went away. Then the informant lodged his FIR.

4. The charge-sheet contains injury certificate in respect of injuries suffered by the first informant. He had suffered tenderness and one 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. 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. Besides the evidence of eye witnesses, the charge-sheet contains statement of the applicant himself recorded U/s.18 of the MCOC Act. In that

statement he had stated that he had reached the spot on his motorcycle. By that time quarrel was going on between Balu and the informant. The applicant tried to pacify both of them but they continued with their quarrel. The others came there and started assaulting the informant, thereafter the applicant went away. Thus, in short, his statement is exculpatory and is not admission of an offence. There is no other material in the form of recovery etc. against the applicant.

5. Heard Shri. Mundargi, learned Senior counsel for the applicant and Ms. Kaushik, learned APP for the State.

6. Shri. Mundargi submitted that there is hardly any evidence against the applicant. The offence is a petty offence. The informant has not suffered major injury. The stolen articles including the cash was only worth Rs.4700/- and for this offence the applicant is in custody since 03/09/2016. He further submitted that the applicant does not have any criminal antecedents to his discredit and, therefore, there is no question of he being a member

of an organized crime syndicate. Learned APP left the decision to the court. She submitted that there are no antecedents against the applicant, but one proceeding under Chapter VIII of the Code of Criminal Procedure was initiated against him.

7. I have considered all these submissions. As rightly pointed out by the learned senior counsel for the applicant, there are no criminal antecedents against the applicant. There is nothing to show that the applicant had taken part in any of the activities of the main accused Balu Mane. The approval granted U/s.23(1) of the MCOC Act shows that the organized crime syndicate was led by main accused Abhiman @ Balu Mane. It is mentioned in the approval that, he along with his associates was committing the offences of robbery, theft, illegally transporting sand, obstructing the public servants in their duties etc. The approval mentions seven cases against him since the year 2013. In none of the cases the other accused are his co-accused. Thus, prosecution needed to show some association of the applicant with the activities of gang leader Abhiman @ Balu Mane and his organised crime syndicate,

and that the present offence was continuation of illegal activities of the organised crime syndicate. The description in the FIR of the events shows that Balu had made a phone call and thereafter the applicant along with others had come to the spot. Thereafter Abhiman simply directed them to help him in recovery of his money. The other eye witnesses Ashok has also narrated the same thing. This does not show that the applicant was aware of the transaction between the informant and the main accused Balu Mane. The applicant simply acted on his direction to recover the money. There is nothing to show that the applicant was aware that the informant was to pay an amount in respect of sand that he had allegedly purchased from the first informant. Though, the applicant's statement U/s.18 of the Act shows that he was aware that Balu was indulging in illegal activity and selling sand, that statement is exculpatory in nature and does not have evidentiary value. Therefore, the statements of the informant and the eye witnesses have importance and those statements do not show that the applicant had helped the main accused in his continuing illegal activity. Thus, allegations against the applicant remain restricted to

this particular incident which cannot be termed as continuing unlawful activity of the organized crime syndicate and at this stage, it cannot be said that the applicant was member of such syndicate. In this view of the matter, considering that the incident was a minor incident, at this stage, the bar under section 21(4) of the MCOC Act will not operate against the applicant. The applicant does not have criminal antecedents, therefore, there are reasons to believe that the applicant is not likely to commit offences under MCOC Act in future. In this view of the matter, the applicant deserves to be released on bail.

8. Hence, the following order :

ORDER

- (i) In connection with MCOC Case No.04 of 2017 pending before the Special Court, 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.)