

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

BAIL APPLICATION NO.2974 OF 2018

Majhar Abdulmajid Kashmiri

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Ms.Shubhangi Parulekar, Advocate for Applicant.
- Mrs.A.A. Takalkar, APP for the State/Respondent.
- PC Ricky Bhise, Kondhwa Police Station, Pune, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 11th JUNE, 2019

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.164/17 registered with Kondhwa Police Station, Pune. Initially the offence was registered under sections 307, 120(B), 143, 147, 148, 149 of the Indian Penal Code and under section 4(25) of Arms Act and under section 37(1) of Maharashtra Police Act. Subsequently, the section 3(1)(ii), 3(2) 3(4) of Maharashtra Control of Organized Crimes Act (MCOC) were also added.

2. The incident has occurred on 08/05/2017 in which one Shubham Jadhav was assaulted. The FIR was lodged by mother of said Shubham. Admittedly she is not an eyewitness, but she had seen Shubham leaving their house at 10.45 p.m. on 07/05/2017 to go to his Gymnasium. Thereafter the first informant Chhaya Jadhav received a phone call that Shubham was assaulted. The first informant and others went in search of Shubham. He was found lying in injured condition in an open ground near Mhasoba temple. Shubham was removed to Chintamani Hospital, thereafter to Rao Hospital and thereafter to Rubi Hospital. He was admitted to ICU. On these allegations, the FIR was lodged. The investigation was carried out. The present Applicant was arrested on 10/05/2017.

3. The provisions of MCOC were invoked on 31/05/2017. The charge-sheet is already filed. The charge-sheet contains statements of two eyewitnesses Somesh Laxman Pawar and Vijay Sanjay Shinde. They had witnessed the actual assault committed on Shubham by about 8 to 9 persons with sharp

weapons. The assailants were not known to them. However, on 23/06/2017 identification parade was held wherein both these witnesses have identified the present Applicant.

4. The charge-sheet contains injury certificate of Shubham. He has suffered four serious injuries on his head, face and chest. Dimensions of those five injuries were substantial. All those injuries were described as fatal. Offence u/s 307 of the Indian Penal Code is clearly made out. The application of MCOC shows that the present Applicant was a member of an organized crime syndicate led by one Ashfaq to establish supremacy over the rival gang in the area.
5. Heard learned Counsel Ms.Shubhangi Parulekar for the Applicant as well as learned APP Mrs.A.A. Takalkar for the State.
6. Learned Counsel for the Applicant submitted that though the incident had occurred on 07/05/2017, and the Applicant was arrested on 10/05/2017; the test identification parade was belatedly held only on 23/06/2017. It was held in

violation of rules. The police had not taken precaution to conceal the identity of the Applicant. She further submitted that strangely the statement of the injured Shubham was not recorded. She further submitted that there was only one offence pending against the present Applicant. Hence the application of MCOC is also not proper against the Applicant.

7. As against these submissions, learned APP submitted that the offence is serious. The statement of the injured could not be recorded because he was not in a position to give any statement. However, the charge-sheet does not reveal any record to show that Shubham is not in a position to give statement. But the fact remains, that, the incident was witnessed by two eyewitnesses who have identified the assailants at the identification parade and in particular have identified the present Applicant. Learned APP submitted that statement of co-accused is recorded under section 18 of MCOC Act. In that confession it is mentioned that the present Applicant was with him and other accused when the assault took place.

8. Considering all these circumstances against the present Applicant and application of MCOC provisions at this stage, it is not possible to record a prima facie observation that the offence under MCOC Act is not committed. Secondly even otherwise, the offence alleged against the present Applicant is quite serious taking into consideration the injuries suffered by Shubham. In this view of the matter, I am not inclined to grant bail to the present Applicant. The application is therefore rejected.

(SARANG V. KOTWAL, J.)