

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

5 BAIL APPLICATION NO.789 OF 2020

SHIVAJI @ BIBHISHAN S/O. MAHADEO CHATE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Ghanekar Nilesh S.
APP for Respondent-State : Mr. A. S. Shinde.

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CORAM : V. K. JADHAV, J.
DATE : 14.10.2020

PER COURT :-

1. The applicant is seeking regular bail in connection with Crime No.66 of 2017 registered with Parali (Rural) Police Station, Taluka Parali, District Beed for the offences punishable under Section 392, 393, 353 read with Section 34 of the IPC and Section 3(1)(ii), 3(2), 3(4) of M.C.O.C. Act. His application with similar prayer came to be rejected by the Special Judge under MCOC Act, Aurangabad, vide order dated 18.06.2020, below Exh.39 in Special MCOCA Case No.1 of 2018.

2. The learned counsel for the applicant submits that by order dated 19.08.2019 in Bail Application No.582 of 2019,

this Court (Coram : V. K. Jadhav, J.) has disposed of the application of the applicant seeking bail as withdrawn. The learned counsel submits that, however, there is change in the circumstances. Thereafter the Special Judge under MCOC Act, Aurangabad by order dated 19.12.2019 below Exh.29 in Special MCOCA Case No.1 of 2017 granted bail to co-accused No.2 Prashant Suresh Shep. The learned counsel submits that though the Identification Parade was conducted during investigation, however, the present applicant was not identified. The learned counsel submits that though there is a recovery of certain articles at the instance of the present applicant during investigation, however, the same is not recovered in connection with the present crime. The learned counsel submits that co-accused No.2 Prashant came to be released by the Special Court though there are four common crimes registered against him and the present applicant. There are two more crimes against the present applicant, however, the said crime does not attract the provisions of MCOC Act. The learned counsel submits that the principle of parity stands applicable and the applicant may be released on bail.

3. The learned APP has strongly resisted the application on

the ground that the case as against co-accused No.2 Prashant is distinguishable on material aspects. Furthermore, after charge-sheet, this Court by order dated 19.08.2019 has disposed off the application seeking bail filed by the applicant as withdrawn. Thereafter no liberty was granted to the applicant to file the application for regular bail on any other ground. In the facts of the case and particularly the evidence as against the applicant, the principle of parity is not attracted. The applicant may not be released on bail.

4. It appears that informant Balu Bhimaji Agarkar, who is a Junior Telecom Officer at the relevant time along with the staff members was searching the fault in the OFC cable of village limits of Bhopala, on Parali to Ambejogai road. They all were in the Government vehicle. Though they found the fault, however, could not repair it due to the night time and they returned to Beed and again on 24.02.2017, at about 11.00 a.m. started repairing work. However, at about 4.30 p.m., when they were doing the repairing work, some three unknown persons of age group of 30 to 35 years came there, threatened to stop repairing work. They had forcibly taken the mobile handsets and the machine from the staff members. The said

machine was worth of Rs.30,000/-. They have also committed the robbery of the OFC fiber cutting cutter. On the basis of these allegations, all three accused persons came to be arrested on 17.08.2017.

5. It appears that during the course of investigation, at the instance of the present applicant, two electrodes and one power cord came to be seized under the memorandum and seizure panchnama drawn under Section 27 of the Evidence Act. It further appears that the applicant is a gang leader of a organized crimes syndicate / gang and the said gang has committed the various offences under the leadership of the present applicant. The applicant has filed the successive applications for getting released on bail. I have carefully gone through the order passed in respect of co-accused No.2 Prashant. The allegations against him altogether different and there is no recovery against him. It has been observed by the Court that the only material on record is the statement of co-accused Shivaji i.e. the present applicant. It further appears that though there are four common crimes registered against the applicant and the said co-accused Prashant, however, in addition to that, two more crimes seems to have been

registered against the applicant. It has been revealed during the course of investigation that the applicant is a leader of the said organized crimes syndicate / gang. So far as the earlier disposal of the application of the applicant bearing Bail Application No.582 of 2019, by order dated 19.08.2019 is concerned, no further liberty is granted to the applicant to file application for bail in the change circumstance. Furthermore, it also appears from the order passed by the Special Judge under the MCOC Act that the withdrawal of the said application before this court was not pointed out to the learned Judge before passing the said order, below Exh.29 in respect of co-accused No.2 Prashant. Thus, considering the entire aspect of the case, I am not inclined to release the applicant on bail. Hence following order :

ORDER

The application is hereby rejected.

(V. K. JADHAV, J.)

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vmk/-