

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

CRIMINAL BAIL APPLICATION. NO. 919 OF 2019

Yakub Yunus Shaikh

.. Applicant

Vs.

The State Of Maharashtra

.. Respondent

WITH

CRIMINAL BAIL APPLICATION. NO. 1711 OF 2019

Bhimraj Genu Avhad

.. Applicant

Vs.

The State Of Maharashtra

.. Respondent

WITH

CRIMINAL BAIL APPLICATION. NO. 2790 OF 2019

Raosaheb Genu Avhad

.. Applicant

Vs.

The State Of Maharashtra

.. Respondent

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Mr.Sandeep Kumar Singh, Advocate for Applicant in
BA/919/2019

Niranjan Mundargi a/w. Raviraj Paramane i/b Jaydeep S.
Vaishampayan for Applicant in BA/1711/2019.

Shashank P. Borade for Applicant in BA/2790/2019.

A.A. Takalkar, A.P.P. for the State-Respondent.

(I.O.) Ajay Deore (S.P.) CID, Nashik.

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CORAM : PRAKASH D. NAIK, J.

DATE : 02nd MARCH, 2020

PC.

1 The Applicants in these applications are seeking bail
in connection with C.R. No.I-36 registered with MIDC Police

Station, Ahmednagar, for offence punishable under Sections 304, 328 read with Section 34 of the Indian Penal Code (for short "IPC"). The First Information Report (for short "FIR") was lodged on 14th February 2017. Subsequently, provisions of the Maharashtra Control of Organized Crimes Act (for short "MCOC Act") were invoked vide sections 3(1) (ii), 3(2), 3(4) and Section 4 of the MCOC Act and Sections 65 (c) (f), 68 (b), Section 80 of Bombay Prohibition Act also invoked.

2 The brief facts of the prosecution case are as follows.

(a) On the basis of complaint lodged by Baban Rangnath Avhad on 14th February 2017, MIDC Police Station, Ahmednagar registered an offence vide C.R. No. 36 of 2017.

(b) Ms. Mangal Mahadev Avhad and Ms. Bhagyashree Mokate, both residents of Pangarmal, were contesting Jeur Zilha Parishad Elections. Two brothers of the complainant namely Popat Rangnath Avhad and Dilip Rangnath Avhad, along with other villagers were invited by Mahadev Kisan Avhad for campaigning since last past four days.

(c) On 12th February 2017, as a part of election campaign, party was arranged for volunteers and villagers by candidate Mangal Mahadev Avhad at her residence. Liquor and vegetarian/non-vegetarian food were served. Popat Rangnath Avhad and Dilip Rangnath Avhad had left the house for campaigning. They did not return home. On 13th February 2017 at about 08:30 pm, the brother-in-law of Popat Avhad informed complainant that Popat and Dilip are feeling giddiness and vomiting, and they had been brought to Civil Hospital, Ahmednagar. When the complainant reached hospital, he was informed that Popat Rangnath Avhad had expired and thereafter other brother Dilip Rangnath Avhad had also consumed liquor, food and during treatment he passed away.

(d) The complainant inquired with brother-in-law of Popat Avhad as to how the incident had occurred. He was informed that on 12th February 2017, the brother of the complainant and others were campaigning for Mangal Mahadev Avhad. In the evening, party was arranged. The liquor was served with food. The victims suffered from vomiting and giddiness. They were taken to hospital and during treatment they were declared dead.

It was also revealed that several other persons had also suffered after consumption of liquor and food and they were undergoing treatment.

(e) Accused Bhimraj Genu Avhad and Raosaheb Genu Avhad had arranged for Indian and foreign liquor. The same was distributed by Ajinath Mahadev Avhad, Udhav Mahadev Avhad, Bhimraj Avhad, Raosaheb Avhad and Mahadeo Avhad. After consuming liquor, several persons suffered giddiness and vomiting and they were admitted to hospital.

(f) The spurious liquor was manufactured by Mohan Shriram Duggal, Sonu @ Sandeep Mohan Duggal, Jagjeetsingh Kisansingh Gambhir, Jakir Kadar Shaikh, Hamid Ali Shaikh, Vaibhav @ Shekhar Jadhav, Bharat Joshi, Nanna @ Ajit Sevani, Yakub Shaikh, Dada @ Pravin Vani, Navnath Dhadge, Amit Motiyani and Rajendra Buge. The liquor was distributed by Bhimraj Avhad and his brother Raosaheb Avhad in the party organized by Bhagyashree Mokate, Mangal Avhad.

(g) About 16 persons were injured and 9 persons died on consuming the poisonous liquor. Several accused were arrested.

Statement of witnesses were recorded. On completing investigation, charge-sheet was filed.

3 Learned Advocate for the Applicant in Criminal Bail Application No. 919 of 2019 submitted that, the Applicant Yakub Shaikh is not concerned with manufacturing of spurious liquor. The allegation against him are vague. The provisions of M.C.O.C. Act are not attracted in the present case. The Applicant is in custody from the date of arrest. Co-accused Amit Wasumal Motiyani (accused No. 18) has been granted bail by the Special Court by order dated 16th April 2018. There is no material on record to show complicity of the Applicant in manufacturing and distributing any poisonous Indian or Foreign liquor. There is no material to indicate that Applicant is a party to any conspiracy to manufacture and distribute any poisonous liquor. There is no material to indicate that the Applicant is party to any conspiracy to manufacture, sell or distribute any poisonous liquor, role with regard to mixing of Ethyl alcohol and Methyl alcohol in regulatory to prepare illicit liquor is attracted to other accused. The allegation against the Applicant is of general nature that he along with accused no. 17 received duplicate seal and label of

various brands of liquor which was later on labeled and sealed. This allegation is not supported by any evidence. He had no connection with manufacturing illicit liquor and he was not even aware about the same. He was helping at the request of accused No.9 Zakir Shaikh who was his relative. The provisions of M.C.O.C. Act are not attracted in the instant case in absence of any material to suggest commission of offence of organized crime by the Applicant. The offence relates to Bombay Provisions Act and the same would not attract the provisions of MCOC Act. There is no evidence to suggest that the Applicant has engaged in any continuing unlawful activities or had committed offence of organized crime.

4 The prosecution has opposed the grant of bail by filing affidavit-in-reply. Learned APP submitted that the offence is serious in nature. Several persons had died. Several others had injured. Death was on account of consumption of illicit liquor. The Applicant has played a vital role in the crime. There is a direct connectivity of the Applicant in manufacturing of spurious liquor. The Chemical Analysis Report reveals Ethyl alcohol and Methyl alcohol which is poisonous substance. The provisions of

M.C.O.C. Act are applicable in this case. Accused No. 20 Surjeetsingh Bhagatsingh Gambhir was in possession of 'Sai-Bhushan Canteen' in Civil Hospital, Ahmednagar and having knowledge of illegal business of accused no.8. Jagjeetsingh Kisansingh Gambhir and Accused No.9 Jakir Kadar Shaikh allowed them to run the business. Accused No.8 and Accused No.9 given sub-contract to accused no.7 Mohan Shriram Duggal to run the canteen. The poisonous liquor prepared by the accused was transported by Scorpio Vehicle of accused no.4 Bhimraj Avhad. Jagjeetsingh Kisan Gambhir is the leader. Several cases registered against him. The Applicant is active member of Gang. Call details record of the Applicant shows that, there was contact with gang leader and other accused. The spurious liquor was supplied by accused was discovered and seized from Hotel Sarthak and sent for Chemical Analysis to the Forensic Laboratory. The report shows presence of Methanol which corroborates with viscera reports of deceased in this case. Two cases were registered against the Applicant with Tofkhana Police Station, Ahmednagar vide C.R. No.160 of 2005 under Sections 66 (b), 83 Maharashtra Prohibition Act and C.R. No.09 of 2010 under Section 66 (f) Maharashtra Prohibition Act. There is

sufficient material on record to show complicity of the Applicant in the crime.

5 Learned counsel for the Applicant appearing in Criminal Bail Application No. 1711 of 2019 submitted that, no case is made out against him for any offences. The provisions of M.C.O.C. Act are not attracted. Applicant had no knowledge that the liquor was spurious or it that contained poisonous substance and he is not concerned with manufacturing liquor. He has no connection with the co-accused. Assuming prosecution case to be truth, Applicant had collected the liquor bottles and the same were brought at the venue and then it was distributed to villagers. There is nothing to infer that the Applicant was aware that the liquor was poisonous. Section 304 of IPC cannot be attracted against the Applicant. The provisions of M.C.O.C. Act cannot be applied against him. The brother of the Applicant had also consumed spurious liquor and he was required to be admitted to hospital for treatment. Having knowledge that the liquor is spurious as alleged he would not have distributed in the party. It was consumed by several villagers including his brother. The Applicant is in custody from 14th February 2017. The

Applicant at the most is buyer of liquor at the instance of accused, who had arranged the party. He was not party to conspiracy. The only allegation against him is that the Applicant purchased the liquor from the canteen of Jagjeetsingh @ Jitu Seth and his accomplice Jakir Shaikh and distributed in the party. There is no evidence to show that the Applicant was aware about the condemnation of liquor. The confessional statement of accused Mohan Daggal (since deceased) and Sonu Duggal would only indicate that the Applicant used to visit Jagjeetsingh at canteen and buy liquor from him as it was available at reasonable rate. The confessional statement do not indicate that the Applicant was aware about illegal business of Jagjeetsingh Gambhir. There was no reason for Applicant distribute spurious liquor as the organizers were his relatives. No knowledge of likelihood of death as required under Section 304 of the IPC can be attributed to him. The ingredients to constitute offence under Section 304 of the IPC are absent. The Applicant is not involved in any case with Jagjeetsingh Gambhir @ Jitu Seth. Two more offences are registered with Ahmednagar Taluka Police Station against the accused. The Applicant was impleaded as an accused. However, subsequent report was filed under Section

169 of Cr.P.C. against him. There is no evidence to show that, the Applicant was member of any organized crime syndicate of Jagjeetsingh Gambhir @ Jitu Seth. The Applicant is in custody since 14th February 2017. Investigation is completed and charge-sheet is filed.

6. Learned counsel relied upon order passed by this Court in Writ Petition No. 913 of 2019 preferred by Surjit Bhagatsingh Gambhir wherein it was directed that the said accused shall not be arrested in the absence of material available against him, in the charge-sheet establishing his culpability under the provisions of M.C.O.C. Act.

7 The prosecution has opposed the application for bail by filling affidavit-in-reply. Learned APP submitted that, the Applicant is involved in the offence. There is sufficient evidence to show complicity of the Applicant in the crime. The Applicant had purchased illicit liquor from the co-accused and the same was distributed. The liquor was purchased at cheaper rate and he had knowledge that it is spurious. The defence that he had no knowledge about the contents of liquor will have to be agitated

at the time of trial. The offence is of serious nature. Several persons have died and injured. The confessional statement of the accused indicates the complicity of the Applicant in the crime. There are several cases registered against gang leader. The Applicant is member of crime syndicate. He was in contact with gang leader Jagjeetsingh Gambhir. The confessional statement of accused No.7 and accused No.11 reveals that the Applicant was having knowledge about spurious and illicit liquor. The Applicant brought spurious liquor and distributed amongst the visitors for party. The Applicant has previous antecedents. Four cases were registered against him with Tofkhana Police Station, Ahmednagar vide C.R. No.136 of 1999 under Sections 143, 147, 324 of the IPC, C.R. No. 123 of 2005 for offence under Sections 302, 201 of the IPC, C.R. No.193 of 2015 under Sections 12 (a), 4 and 5 of Maharashtra Gambling Act and C.R. No.363 of 2015 for offence under Sections 143, 147, 148, 149, 447, 323, 504, 506 of IPC read with Section 4, 25 of the Arms Act.

8 Learned Advocate appearing for the Applicant in Criminal Bail Application No.2790 of 2019 submitted that, the Applicant has been falsely implicated in this case. He is not

concerned with the preparation of illicit liquor. He had no knowledge that liquor was contaminated provisions of M.C.O.C. Act are not applicable. He is not involved in any crime with gang leader. The Applicant was involved in one case bearing No. STC No. 4602 of 2008 under Section 65E of Mumbai Prohibition Act. The said case resulted in acquittal by judgment and order dated 30th January 2010 passed by Chief Judicial Magistrate, Ahmednagar. The requirement to constitute the offence under the M.C.O.C. Act is not fulfilled in the case of the Applicant. There is no evidence of the Applicant that he has linked with organized crime syndicate and he is conspired with the main accused. The Applicant has not played any role in manufacturing poisonous liquor. He is not concerned with the consumption of liquor by victims. There is no evidence to show that the Applicant had knowledge about the purchase of poisonous liquor by the co-accused. He is not associated in any manner with main accused and he had no knowledge about poisonous liquor supplied by the co-accused. The Applicant himself is one of the victims of the said crime. He had consumed the poisonous liquor. Thus, it cannot be said that the Applicant was aware that the liquor was poisonous and in spite that it was distributed/served

to the members of party. The investigation do not remotely establish that the Applicant was aware about contamination of liquor. There was no *mens rea*.

9 The prosecution has filed affidavit in reply opposing the application for bail. Learned APP submitted that the offence is of serious in nature. The Applicant is member of organized crime syndicate. The Applicant distributed spurious liquor to the visitors of the party. There are serious cases against gang leader. The liquor was spurious. It contained Ethyl alcohol and Methyl alcohol as per Forensic Laboratory Report. The Learned Special Judge has passed the order by giving reasons while rejecting application for bail. The confessional statement of the co-accused implicate Applicant. The Applicant had knowledge that liquor is available at cheaper rate in the canteen of Mohan Duggal.

10 I have perused the documents on record. Party was arranged as a part of campaign by candidates contesting the election. Party was hosted in the house of Mangal Avhad. The liquor was served to the visitors who attended party. After consumption of liquor, the victims suffered from giddiness and

vomiting and they were admitted in hospital. About 9 persons died, thirteen were injured two persons turned blind and one had suffered from Paralysis. It was an unfortunate incident due to which several persons were affected. Approval was granted to apply provisions of M.C.O.C. Act on 13th July 2017. The sanction was accorded under Section 23 (2) M.C.O.C. Act on 10th August 2017. Supplementary charge-sheet was filed for offence under Sections 304, 328 read with section 34 of IPC and Sections 65(c) (d) (f), 68(b), of the Maharashtra Prohibition Act read with Sections 3(1) (i), 3 (1) (ii), 3(2), 3(4) and Section 4 of M.C.O.C. Act. During the course of investigation it was revealed that Jagjeetsingh Kisansingh Gambhir conduct organized crime syndicate for pecuniary benefit. About 11 cases were registered against Jagjeetsingh Gambhir under the Provisions of IPC as well as Maharashtra Prohibition Act. The seized muddemal contains Methyl alcohol as per Forensic Laboratory Report which corroborates with viscera report of deceased.

11 The contention of the prosecution is that, as per Section 21 (4) of M.C.O.C. Act, it is necessary to see that there are reasonable ground that accused are not guilty of such offence. There is scientific evidence connecting the accused with

the crime supported by Chemical Analysis Report. Confessional statements of accused No.7 Mohan Duggal and accused No.11 Sonu @ Sandeep Duggal were recorded under Section 18 of M.C.O.C. Act which are admissible in evidence. The accused are named in the confession.

12 According to the prosecution, Accused No.20 Surjitsingh Gambhir was in possession of 'Sai-Bhushan' Canteen in Civil Hospital, Ahmadnagar. Accused No.8 gave sub-contract to accused No.7 Mohan Duggal to run the canteen. The poisonous liquor was prepared in the canteen party was organized by accused No.1 and accused No.2. The liquor was transported by Scorpio vehicle of accused No.4 Bhimraj Avhad (Applicant in Bail Application No. 1711 of 2019). Although liquor was hazardous to people, the same was served in the party. Due to consumption of liquor, there were casualties and injuries. Accused No.13 used to sell Spirit Ethyl Alcohol which was used for preparation of spurious country made and foreign liquor and same was transported by Jeep owned by accused No. 16. The accused No. 14 Nanna @ Ajit Gulraj Sevani with the help of accused No.18 Amit Motiyani had demanded 200 litres of waste

solvent (Methanol Mix) from Jyoti Pharmacy through Janseva Transport. The Spirit and Methyl was provided to Accused No.7, Accused No. 11 and Accused No.15 Yakub Yunus (Applicant in Bail Application No.919 of 2019). Accused No. 14 Nanna @ Ajit Sevani was allegedly instrumental in preparation of seal and labels of country made and foreign liquor provided the same to Accused No.7 Mohan Duggal and Accused No. 11 Sonu Duggal. Accused No.19 Rajendra Buge (deceased) provided duplicate seal and label of brands of liquor to accused No.15 Yakub Yunus and Accused No. 17 Navnath Dhadage. Accused No.11 purchased empty liquor bottles from scrapped supplier. Contaminated spurious liquor was prepared by accused No.7, accused No.10, accused No.11 and Accused No.12. Accused No.15 Yakub Yunus, accused No.17 Navnath Dhadage used to manufacture it by Hotel Bhavarchi, Kalyan Road, Ahmednagar used to sell it for the pecuniary gain of accused No.8 Jagjeetsingh Gambhir and accused No.9 Jakir Shaikh. It is alleged that accused prepared spurious liquor trade by mixing of noxious substance i.e. Spirit (Methyl Alcohol) and by branding it, transported and sold in the market.

13 Postmortem Report and Chemical Analysis Report shows that, excess quantity of Methyl Liquor and Ethyl Liquor were found in the viscera of deceased. It is alleged that call detail record shows connectivity of accused. Statement of witnesses shows involvement of all the accused.

14 The confessional statements of Mohan Duggal and Sonu @ Sandeep Duggal were recorded under Section 18 of M.C.O.C. Act. They stated that the canteen in the premises of Civil Hospital, Ahmednagar is run at the instance of accused No.8 Jagjeetsingh Gambhir and Accused No. 20 Surjeetsingh Gambhir wherein spurious liquor trade was carried out by use of Spirit and Methyl Alcohol supplied by accused No.13 Bharat Joshi stored in kitchen of accused No.16. The liquor was manufactured in the night hours. It is alleged that labels and caps were provided by Jakir Shaikh and other accused.

15 The prosecution case against the Applicant Yakub Yunus is that he used to participated in the preparation of country made liquor with co-accused. The role has been attributed to him in the confessional statement of Mohan Duggal

and Sonu @ Sandeep Duggal. The liquor boxes loaded in the vehicle of accused Bhimraj Avhad were taken from Applicant Yakub Shaikh. He conducted Hotel Bavarchi, Kalyan Road Ahmednagar and preparing illicit liquor and selling the same. Notebook was recovered from the hotel of the accused Yakub Shaikh, which contained the notes regarding the account. Hand writing was examined from the experts, which was found to be of the Applicant/accused. Two cases were registered against him. CDR report shows that he was in touch with Jagjeetsingh @ Jaggu Seth and other accused. Mohan Duggal has stated that, the Applicant Yakub Shaikh used to sell illicit liquor at hotel Bavarchi and used to help other accused in preparing illicit liquor in the canteen. Sonu @ Sandeep Duggal in his confession has stated that the Applicant Yakub Shaikh is relative of Jakir Shaikh and he was called for helping them in preparing illicit liquor. Considering the incriminating evidence against the Applicant Yakub Shaikh, no case for grant of bail is made out. There is sufficient evidence to show his complicity in the crime.

16 The prosecution case against Bhimraj Avhad is that he had purchased the illicit liquor from the co-accused and the

same was distributed in the party. He purchased the same from 'Sai-Bhushan Canteen' in Civil Hospital, Ahmednagar. The confessional statement of Mohan Duggal and Sonu @ Sandeep Duggal attributed overt-act and knowledge about the liquor being sold at cheaper rate. Statements of witnesses recorded during the investigation support the prosecution case qua involvement of Bhimraj Avhad. He showed the place of Sai-Bhushan Canteen from where the country made liquor was seized. The Chemical Analysis Report indicates that the Methyl Alcohol was existing in the liquor. The vehicle used in the crime has been seized at his instance. Four cases were registered against him. Call detail record shows that, he was in touch with gang leader and other accused. The confessional statement of Mohan Duggal mentioned that the Applicant used to visit the canteen frequently and used to have conversation with Jitu Seth and Jakir Shaikh and used to purchase the liquor from the said shop. He was aware that the liquor was available at cheaper rate from the canteen. Thus, he had knowledge that it is spurious. The confessional statement of Sonu @ Sandeep Duggal mentioned that the liquor was sold to him. Considering the nature of evidence against the Applicant, the gravity of the

offence and the role attributed to the Applicant, it cannot be said that he is not involved in the offence. He is equally responsible for death and injury to the victims. He was frequently visiting the canteen and inference can be drawn that he was aware that spurious liquor has been manufactured by the co-accused, which is sold at cheaper rate. He was instrumental in purchasing the liquor and distributing the same in the party. Submissions advanced by the advocate for the accused appearing in both the applications that the provisions of M.C.O.C. Act are not applicable in the case cannot be agitated at this stage. Apart from that there is sufficient evidence against Yakub Shaikh and Bhimraj Avhad to establish the offences under the IPC.

17 As far as the Applicant Raosaheb Avhad is concerned, it is alleged that he was present in the party and distributed/served the liquor to persons, who attended the party. One case was registered against him in past which has resulted in acquittal. The CDR shows that during the period from 01st August 2016 to 03rd April 2017 there were calls between the Applicant and Bhimraj Avhad. It is pertinent to note that, Bhimraj Avhad is the brother of the Applicant Raosaheb Avhad.

No adverse inference would be drawn. The confessional statement of Mohan Duggal and the other accused indicates that the Applicant had visited canteen along with his brother Bhimraj Avhad. The confessional statement of the co-accused also indicates that some bottles were given to the Applicant/accused. However, it is pertinent to note that on the date of incident, the delivery was made to Bhimraj Avhad. There is no other evidence to show involvement of the Applicant in the crime. It is pertinent to note that the Applicant Raosaheb Avhad was himself the victim of consumption of liquor. After the consuming liquor, he was hospitalized and undergone treatment. The medical case papers annexed to application for bail indicates that the Applicant Raosaheb Avhad was diagnosed with acute alcoholic intoxication suspected methanol poisoning in view of severe metabolic acidosis and bilateral Bronchopneumonia / Dehydration / Hyperkalemia. Medical case papers also record the history of nausea/vomiting giddiness vertigo consumption of alcohol on 12th December 2017. The medical case papers also mention the treatment given to the Applicant. If the Applicant had knowledge that the liquor is spurious, he would not have served the same to the other victims on consumed himself. Thus,

the case of the Applicant Raosaheb Avhad can be distinguished from the other accused. He is in custody from the date of arrest. Presently no other case is pending against him. Considering the circumstances, case for grant of bail by accused Raosaheb Genu Avhad is made out.

ORDER

- i) Bail Application No.919 of 2019 and Bail Application No.1711 of 2019 are rejected;
- ii) Bail Application No.2790 of 2019 is allowed;
- iii) The Applicant is directed to be released on bail in connection with C R. No.80 of 2017 registered with MIDC Police Station, Ahmednagar on his executing P.R. bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- iv) The Applicant shall report concerned police station once in a month on every first Saturday between 11.00 am. to 01.00 pm., till further order.
- v) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)