

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

CRIMINAL BAIL APPLICATION NO. 702 OF 2019

Mayur Arun Gavali ...Applicant

Versus

The State of Maharashtra ...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 1388 OF 2019**

Sandip Dattatray Jadhav ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Shailesh D. Chavan a/w Mr. Rohan Hogle a/w Mr. Sangram Mundhekar, Advocate for the Applicant in Bail Application No. 702 of 2019.

Mr. Aniket U. Nikam i/b Mr. Vivek N. Arote in Bail Application No. 1388 of 2019.

Mr. S. H. Yadav, APP for the Respondent – State in Bail Application No. 702 of 2019.

Mr. H. J. Dedhia, APP for the Respondent – State in Bail Application No. 1388 of 2019.

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CORAM : PRAKASH D. NAIK, J.

DATE : 4th February, 2020

PC :

1. The applicants in both the applications are seeking bail under Section 439 of Cr.P.C. in connection with C.R. No. 779 of 2017 registered with Satara City Police Station, Dist. Satara for offences punishable under Sections 395, 341, 364, 504 & 506 of Indian Penal

Code. Subsequently, the provisions of Section 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organised Crime Act, 1999 (for short “MCOC Act”) were applied. The FIR was lodged on 24th September, 2017.

2. The prosecution case is that the complainant is in construction business. He had obtained loan of Rs.3,50,000/- on interest @ 15% from Pradip Jadhav on 3rd March, 2016. The complainant has returned the entire amount along with interest. However Pradip Jadhav was demanding more amount. Hence, the complainant had lodged the complaint with Satara City Police Station on 8th September, 2016 vide C.R. No. 572 of 2016. Although the complainant returned the entire amount, the accused Pradip Jadhav was repeatedly demanding the amount. On 26th November, 2016 while he was at his native village, the accused Pradip Jadhav and his three associates visited his house, they abused wife of the complainant and threatened her of dire consequences. Wife informed about the said incident to the complainant after he returned home. The complaint was lodged with Satara City Police Station in that regard. After learning about the complaint, accused Pradip Jadhav called the complainant and returned his Honda Amaze Car. However, while doing so he intimidated the complainant. On 27th November, 2016 at about 11.00 a.m. when the complainant had visited the Court for work, applicant Sandip Jadhav met him. He told the

complainant that he is associated with Jadhav and he should resolve the issue otherwise he will have to face consequences. In December, 2016 at about 5.30 p.m. the complainant and his friends were proceeding by his car for making payment of labourers. He was carrying amount of Rs. 50,000 with him. They were chased by accused in car which was without number plate. Accused Pradip Jadhav got down from the vehicle and told complainant that he want to have discussion with him. He was called at the adjacent Shop. The complainant went to the said place. At that time he noticed associates of Pradip Jadhav sitting at the said place. Their names were Bala Khude, Mayur Gawali and two other unknown persons. They demanded Rs. 1,00,000/- and threatened the complainant. The complainant parted the amount of Rs.50,000/- which he was carrying with him. The accused demanded balance amount of Rs. 50,000/-. On 28th December, 2016 the complainant parted an amount of Rs. 39,000/-. In spite of that the accused Pradip Jadhav was repeatedly threatening the complainant and demanding more money. In April, 2017 while passing by his car complainant was stopped by Pradip Jadhav. Pradip Jadhav and his associates pulled him out of car and abused him. They demanded money from him and threatened him of dire consequences. He was assaulted by fist and kick blows. They removed the cash of Rs. 14,000/- from him and

forced him to sign a cheque of an amount of Rs. 5,00,000/-. On account of fear the complainant did not lodge the complaint with the police. The accused were repeatedly threatening the complainant of dire consequences. FIR was lodged on 24th September, 2017. The period of offence as stated in the FIR from 26th November, 2016 to April, 2017. The investigation proceeded. Statement of witnesses were recorded. Both the applicants were arrested. The approval was sought for applying the provisions of MCOC Act. Approval was granted. On completing investigation, charge-sheet was filed.

3. Both the applicants had preferred applications for bail before the MCOC Special Court, Pune which were rejected.

4. Learned advocate appearing for the applicants submitted that the provisions of MCOC Act cannot be attracted in this case. The dispute relates to transactions of money lending. There is no material to come to the conclusion that the accused are involved in continuing unlawful activities by organized crime as stipulated under the provisions of MCOC Act. It is further submitted that the only role attributed to applicant Sandip Jadhav is that he had threatened the complainant on 26th November, 2016. The role attributed to the other applicant Mayur Gawali is that he was present along with other accused with the main accused Pradip Jadhav at a place where

complainant was called for discussion. There is inordinate delay in lodging the FIR. Although the last incident is of April, 2017, the FIR was lodged on 24th September, 2017. The confessional statement of accused Avinash Sathe is exculpatory in nature. He has exonerated himself and attributed role to the other accused. Even accepting confession of the said accused it cannot be said that it would attract the provisions of MCOC Act. Admittedly there was money lending transaction by complainant with accused Pradip Jadhav. The prosecution proceeds on the basis that Balu Khude is the gang leader having several criminal antecedents. However, from the complaint and material on record is apparent that the main role was attributed to Pradip Jadhav and not to Balu Khude. It is submitted that no bodily harm was cause to the complainant. Applicants are in custody from the date of arrest. The learned Sessions Judge while rejecting the application for bail had observed that the application of MCOC Act is doubtful.

5. Learned APP relied upon the affidavit filed by the investigating officer. It is submitted that the offence is of serious in nature. The accused are indulging in monetary transactions of money lending and charge heavy rate of interest. The complainant was intimidated from time to time. In spite of repayment of the amount, the accused kept on threatening him for amount. It is submitted that pecuniary

transactions are involved in this case and on account of the unlawful acts the provisions of MCOC Act would be attracted. The wife of the complainant had filed N.C. complaints on 26th November, 2016 which corroborates the version of the complainant. The confessional statement of Avinash Sathe recorded under Section 18 of the MCOC Act attributes role to the applicants. It is submitted that specific role has been attributed to both the applicants. From time to time the complainant was made to part with huge amount. It is further submitted the the affidavit filed by the prosecution mentioned that the cases were registered against Sandip Jadhav and Mayur Gawali. It is further submitted that several cases were registered against Aakash Khude who is the gang leader.

6. Having heard both the sides. I have perused the charge-sheet. The complaint proceeds with the fact that the complainant had obtained loan amount from Pradip Jadhav on 3rd March, 2016 in the sum of Rs. 3,50,000/- with interest @ 15%. The entire case relates to the money lending. It is alleged that from time to time the complainant was threatened for returning the money towards the interest. The first incident had allegedly occurred on 26th November, 2016 and the last incident is of April, 2017. The FIR was lodged on 24th September 2017 i.e. after a period about 5 months from the last incident. The complainant has stated that the delay in registration of

FIR was on account of fear of accused Pradip Jadhav. However, it is apparent that, according to the complainant he had lodged the complaints earlier against Pradip Jadhav. Explanation for delay appears to be after thought. The loan amount was obtained from Pradip Jadhav. The applicant Sandip Jadhav is brother of Pradip Jadhav. The previous cases are against them relating to the money lending. According to the prosecution, the gang leader is Aakash @ Balu Tanaji Khude, however on perusal of the FIR and the other documents it appears that lead role was not played by him. Applicant Sandip Jadhav is not involved in any other case with Balu Khude. Applicant Sanjay Jadhav arrested on 15th November, 2017 and applicant Mayur Gawali was arrested on 7th February, 2018.

7. Learned counsel for the applicant Mayur Gawali pointed out that one case was registered against Mayur Gawali with Aakash @ Balu Tanaji Khude, however the said case has resulted in acquittal. The said applicant was acquitted in all the cases registered against him. Except the case arising out of C.R. No. 84 of 2011 for offence punishable under Section 160 of Indian Penal Code. According to him no other cases are pending against him.

8. On perusal of the charge-sheet which is apparent that the entire case is relates to money lending transaction with the

complainant. The applicant Sandip Jadhav had allegedly threatened the complainant on 27th November, 2016. He has not been attributed any other role. Thereafter, his presence was reflected in the incident of April, 2017. I have perused the confessional statement of Avinash Sathe. He has exonerated himself and the statement is exculpatory in nature. He attributes role to the applicants. On perusal of the contents of the said statement it would not satisfy the requirement of organized crime. The Sessions Court while rejecting the application for bail had observed that the application of MCOC is doubtful, however, on merits, the application for bail was rejected. As against Sandip Jadhav is not connected with any other case with Balu Khude. The reply filed by the prosecution refers to the registration of six cases. One case is resulted in acquittal. One case was closed as final and the other cases are pending. The offences in pending cases are under Sections 399, 402, 323 and under the Provisions of Money Lending Act. Considering the nature of material on record, the embargo under Section 21(4) of the MCOC Act would not be impediment for grant of bail. They are in custody from the date arrest, case for grant of bail is made out.

9. Hence, I pass the following order :

ORDER

- i) Bail Application Nos. 702 of 2019 & 1388 of 2019 are allowed;
- ii) The applicants are directed to be released on bail in connection with C.R. No. 779 of 2017 registered with Satara City Police Station, Dist. Satara on furnishing P.R. bond in the sum of Rs. 25,000/- each with one or more sureties in the like amount;
- iii) The applicants shall not contact the complainant or any other witnesses and shall not tamper with the evidence.
- iv) The applicants shall report concerned police station once in a month on every first Saturday between 11.00 am. to 1.00 pm. till conclusion of trial.
- v) Bail Applications are stand disposed of accordingly.

(PRAKASH D. NAIK, J.)