

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

BAIL APPLICATION NO.2780 OF 2019

Sandip Ram Phatak

.. Applicant

Vs.

State of Maharashtra

.. Respondent

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Mr.Aniket Nikam a/w. Mr.Piyush Toshnival, Mr.Amit Icham i/b.
Mr.Vivek N. Arote, Advocate for the Applicant.

Mrs.Veera Shinde, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : JANUARY 16, 2020.

P.C. :

The applicant is arrested in connection with C.R.No.188 of 2017, registered with Koregaon Park Police Station, Pune, for the offences punishable under Section 395 of Indian Penal Code (“IPC”, for short). Subsequently, Section 3(1) (ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (“MCOC Act”, for short) were invoked.

2 According to the complainant, he was working in a hotel as waiter. He has alleged that on 12th November, 2017, after the hotel was closed at about 12:00 midnight, 7 to 8 persons

came to the hotel. Out of them, three persons stood near the stair case and five persons came near the counter. The complainant and his father alleged that one of them gave his name as Sagar Jogawade and stated that Nileshbhai had sent him to find out whereabouts of Vivek Yadav. He further stated that the said person was informed that the complainant had no knowledge about the whereabouts of Vivek Yadav. At that time, the complainant was assaulted with fist and kick blows on his face, nose and eyes. He sustained bleeding injuries. Cash of Rs.13,700/-, which was lying in the cash box was taken away by the assailants. It is further alleged that the informant had appraised the said incident to the owner of the hotel. It was latter learnt from Vishal alias Chotu that the accused had came at the hotel in three cars i.e. Jaguar, Safari and Innova. On completing investigation, charge-sheet was filed. The prosecution sought approval for applying the provision of MCOC Act. The approval was granted and in pursuant to that investigation under the provisions of MCOC Act was conducted. It was the case of the prosecution that the accused were members of crime syndicate headed by Nilesh Gaywal. The applicant, Nilesh Gaywal and other accused were arrested. During the course of investigation, confession statement of co-accused Ajay @ Rahul Bhola Gosavi

was recorded under Section 18 of MCOC Act on 4th January, 2019. Statement of some witnesses were recorded in-camera. The statements were also recorded under Section 164 of Cr.P.C.

3 Learned advocate for the applicant submitted that there is no evidence to show involvement of the applicant in the crime. The applicant has been falsely implicated in this case. The alleged gangster who has headed the crime syndicate is granted bail by this Court vide order dated 17th September, 2019 (Bail Application No.37 of 2019). First informant has not named the applicant as accused in the crime. However, subsequently, some statements recorded in-camera and other statements vaguely refers to the name of the applicant, as person who was accompanying accused Nilesh. There is no test identification parade conducted to identify that applicant is the person who was involved in the crime.

4 Learned APP submitted that the involvement of the applicant is disclosed in statements. It is submitted that the confessional statement of Ajay @ Rahul Bhola Gosavi, was recorded. He has referred involvement of the applicant. He was amongst the co-accused. The prosecution has filed affidavit

opposing grant of bail. The affidavit indicate registration of several cases against accused no.1 Nilesh Gaywal.

5 As stated above, this Court has considered the applicability of the provisions of MCOC Act and the nature of evidence against the head of the crime syndicate, who has been granted bail by this Court. The Court has noted the discrepancies in the investigation conducted by the police and the nature of evidence against him. This court has also considered the fact that immediately after the incident, the complaint was lodged with the police at the instance of the complainant, which was treated as non-cognizable complaint. The said complaint do not refer to the allegations in FIR. Thus, there is doubt about the version of the complainant that he was assaulted and cash of Rs.13,700/-, was taken away by the accused. There is no cogent evidence to establish the fact that the applicant was accompanying the co-accused in the hotel premises and that he had assaulted the complainant and was instrumental in taking away cash. The applicant was allegedly the member of crime syndicate headed by Nilesh Gaywal, who has been granted bail by observing that inspite of the rigor of Section 21(4) of MCOC Act, there was no impediment to grant bail to him. On perusal of the charge-sheet,

it can be seen that belatedly, the statement of two persons were recorded in-camera, who referred to applicant was accompanying main accused. The reason for recording the statement in-camera was given as fear of the accused. However, it is pertinent to note that statements of other witnesses recorded during the course of investigation naming the co-accused. The confessional statement although refers to the name of the applicant and others, it does not corroborate the FIR. Considering the aforesaid circumstances, the embargo under Section 21(4) of the MCOC Act would not preclude this Court from granting bail to the applicant.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.2780 of 2019, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.188 of 2017, registered with Koregaon Park Police Station, Pune, on his executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;

- (iii) Applicant shall report the Koregaon Park Police Station, Pune, once in a month on first Saturday of the month between 10:00 a.m. to 12:00 noon, till further orders;
- (iv) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)