

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

CRIMINAL BAIL APPLICATION NO. 3169 of 2018

Sagar Hanumant Shingade ... Applicant

V/s.

The State of Maharashtra ... Respondent

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Satyavrat Joshi, Nitesh Mohite i/b Sumant Deshpande for the Applicant.

A. A. Takalkar, APP for the State/Respondent.

Sanjay Naik Patil, I.O. present.

Gadjevar, API, Dehuroad Police Station present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 21th JANUARY, 2019.

P.C. :

This is an application for bail in CR. No. 277/2017 registered with Dehuroad Police Station, Pune for the offences punishable under Sections 307, 364, 452, 143, 147, 148, 149, 504, 506, of the Indian Penal Code. The Applicant was arrested on 13th July, 2017.

2. The prosecution case is that the Complainant was a friend of one Rahul Vishwakarma. He was warned by co-accused Dadya Holkar and others not to accompany Rahul Vishwakarma. The Complainant was also threatened by the co-accused that if he did not heed to their warning he will be killed. On 2nd July,

2017 at about 7.30 p.m. the Complainant was at his aunt's house. At about 11.30 p.m. the Accused armed with sword, sickle and sticks unlawfully entered into the house of the Complainant's aunt by breaking the door. The Accused assaulted the Complainant with weapons. The Complainant was dragged out of the house and made to sit on motorcycle and he was taken towards Mamurdi Village. When they reached near Shinde Petrol Pum, police vehicle arrived and the Complainant shouted for help. Therefore, all the Accused started assaulting him by weapons. On noticing police vehicle reached near the spot of incident Accused ran away from the spot.

3. Subsequently, approval was sought for applying provision of Maharashtra Control of Organized Crimes Act (for short 'MCOC Act'. Approval was granted. The provisions of MCOC Act were applied. Information was obtained. Charge-sheet was filed against the Applicant and the other Accused.

4. The Applicant preferred application for bail before the Sessions Court which was rejected by order dated 28th August, 2018.

5. Learned Counsel for the Applicant submitted that the provisions of MCOC Act are attracted against the Applicant. The involvement of the Applicant in the crime itself is not established. The Applicant had been falsely implicated in the present case. The confessional statements of the two accused are fake and did not inspire confidence to establish the role of the Applicant the crime. There is no cogent material to show that the Applicant was a part of organized crime syndicate to invoke the provisions of MCOC Act against the Applicant. The Complainant has improvised his version in subsequent statement. The other eye witnesses have also included their statements in their supplementary statement. The first statement of police officer Shyamsingh Pardeshi do not refer to name of the Applicant in his first statement and in the supplementary statement he had referred to the Applicant. Although there is recovery of sickle, there is no CA report relating to the group of blood stains if any on the sickle on record. The recovery will have to disbelieved since there is variation in the statements of the complainant as to nature of weapons used by the Applicant in the said crime. There are no criminal antecedents against the Applicant. He is not involved

in any other crime along with the gang leader. He is in custody from 2017.

6. Learned APP submitted that the Complainant was injured has sustained several injuries. In these circumstances, he did not name the Applicant in the Complaint. In the subsequent statements, the Applicant has been named as person who has participated in the crime. He has been attributed the role of assaulting the Complainant. There are other eye witnesses who has also named the Applicant. The Applicant has motive to assault. The confessional statements of the two accused show the involvement of the Applicant in the crime who was a member of the crime syndicate and thus, the provisions of MCOC Act are invoked against him. There is recovery of weapon from the Applicant.

7. I have perused the charge-sheet. The FIR recorded on 3rd July, 2017 names several persons and some unknown persons as assailants. They were attributed role of specific attack of assaulting by weapons. However name of the Applicant is not referred to as assailant. In the supplementary statement recorded on 07th July, 2017, the Applicant has been named and

it is alleged that he had assaulted the Complainant by stick on his head. Further statement was recorded on 12th July, 2017 in which it was recorded that the Applicant had assaulted by sickle. Thereafter, further statement of the Complainant was recorded on 10th December, 2017 where the Applicant is attributed the role of assaulting the Complainant with other accused by sickle. The Applicant has been named in the subsequent statement. Therefore, it can be inferred that the Complainant was knowing the Applicant and in spite of that his name was not mentioned in the FIR. There is variation in the version of the Complainant with regard to the weapon used by the Applicant in the crime. Similarly, statements of the other witnesses such as Javed Shaikh, Shakir Khan, Poonam Bansode, Suryakant Bansode, Mayur Jagdale, Rajendra Kurne were recorded. In their first statement they have not named the Applicant. However, in the supplementary statement, the Applicant's involvement was disclosed. There are no criminal antecedents against the Applicant. There is nothing to show that the Applicant participated in any criminal activity as a member in crime syndicate along with the alleged gang leader in the past. Although there is recovery of sickle from the Applicant, the

CA report was not on record. It is also pertinent to note that the Applicant is attributed role of assaulting by wooden stick and subsequently by sickle. The nature of weapon used by the Applicant is under shadow of doubt. I have perused confessional statement of Shubham Gove who has stated that the Applicant and the others are acting for gang leader Arun Hastodiya. He has also referred to two earlier incidents of 2015 and 2016. Undisputedly, the involvement of the Applicant was not referred in this statement. Thus, the confession of the said accused recorded under Section 18 of the MCOC Act do not put-forth any substantial material to show that the Applicant is indulging in unlawful activities as a member of crime syndicate. Confessional statement of the other accused Sagar Bhalerao do not refer to any past activities of the Applicant as a member of crime syndicate. He however referred to involvement of the Applicant in the present crime as person who had participated in the crime. The said accused has not attributed any specific role of assault to the Applicant with weapon. Considering the nature of material there is no impediment in granting bail in inspite embargo under Section 21 (4) of the MCOC Act.

8. Hence, I pass the following order:

ORDER

- i) The Bail Application is allowed.
- ii) The Applicant is directed to be released on bail in connection with CR. No. 277/2017 registered with Dehuroad Police Station, Pune on their furnishing PR. bond in the sum of Rs. 25,000/- with one or more sureties in the like amount;
- iii) The applicants shall report Dehuroad Police Station once in month on first Saturday of every month between 11 a.m. and 1 p.m. till further orders.

(PRAKASH D. NAIK, J.)