

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO. 934 OF 2020

(Sanjay Sandipan Khare vs. State of Maharashtra thr. PS Kala Chowki, Mumbai thr. Anti
Terrorist Squad, Nagpur Unit, Nagpur)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri D.V. Chauhan, Advocate for the applicant.
Shri P.K. Sathianathan, Special Counsel for the non-
applicant – State.

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CORAM : PUSHPA V. GANEDIWALA, J.
DECEMBER 17, 2020.

Heard Shri Chauhan, learned counsel for
the applicant and Shri Sathianathan, learned Special
Counsel for the non-applicant – State.

2. The applicant – Sanjay Sandipan Khare,
is seeking bail in Crime No. 2 of 2019 dated
25.01.2019 for the offence punishable under Sections
3, 25 of the Arms Act along with Section 135 of the
Bombay Police Act. Subsequently, the offence under
Section 3 of the Maharashtra Control of Organized
Crime Act, 1999 (hereinafter referred to as MCOC
Act), came to be added against the applicant.

3. The role attributed against the applicant in this crime is that Anti Terrorist Squad (ATS), Nagpur, caught hold of the applicant – Sanjay Sandipan Khare and co-accused Supan Singh Juman Singh at Nagpur Railway Station with one country made pistol, 10 live cartridges and two empty magazines. The role of the applicant is of transporting fire arms from Bihar to Nagpur at the instance of main accused Sheikh Haji Baba Sheikh Sarvar, who is the gang leader.

4. Shri Sathianathan, learned Special Counsel appearing for the State/ ATS pointed out to this Court the connecting link of circumstances to show *prima facie* involvement of the present applicant in transporting the aforesaid fire arms from Bihar to Nagpur for the main accused Sheikh Haji Baba Sheikh Sarvar. The applicant also received payment of Rs.1,20,000/- for the purposes of purchase of said arms from Bihar. There is supporting material in connection with this allegation in the charge sheet.

5. Shri Chauhan, learned counsel for the applicant does not dispute that the main accused Sheikh Hazi Baba Sheikh Sarvar is not the leader of the organized crime syndicate and there is a crime

chart against the said syndicate. It is pointed out that for the offence punishable under Sections 3, 25 of the Arms Act, the punishment prescribed is maximum sentence up to three years, however, as the MCOC Act is made applicable against the present applicant, therefore, the minimum sentence is five years. Now, the question is whether the twin conditions under Section 21 of the MCOC Act, would be applicable against the present applicant. The relevant portion of Section 21 of the MCOC Act is reproduced as under :

“21. Modified application of certain provisions of the Code.

(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless-

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.”

6. With regard to first condition, the prosecution could point out that there are reasonable

grounds for believing that the present applicant is guilty of such offence. However, at the same time, it is very difficult to accept the submissions that he would be likely to commit any offence while on bail. The reason being that the prosecution could point out the present crime, being the first crime as a member of the crime syndicate against the present applicant. Secondly, it is alleged that in 2005 one crime under Sections 3, 25 of the Arms Act was registered against the present applicant, however, he came to be acquitted.

7. On a perusal of the confessional statement of the present applicant with the assistatnce of learned counsel for the applicant, it appears that since 2005 the family business of his father was Wine Bar and Restaurant at Yavatmal and the main accused Sheikh Haji Baba Sheikh Sarvar used to come to his restaurant. He states that in the year 2016, his father closed the business of Bar and Restaurant and thereafter he purchased one Swift Dezire – four wheeler on loan and used to ply the said vehicle on rent and used to earn his livelihood. In 2019, he was asked by the main accused to procure fire arms for him and he fell prey to his proposal.

8. Considering the aforesaid confessional statement by the present applicant, this Court is satisfied that while on bail, he is not likely to commit any offence, since for more than 15 years, he is not involved in any offence muchless under MCOC Act. Investigation in the case is completed and the charge sheet is also filed. In view of the above, this Court is inclined to release the applicant on bail, however, on stringent conditions.

9. In the circumstances, Criminal application is allowed on the following conditions :

(i) The applicant – Sanjay Sandipan Khare, shall be released on bail on executing Personal Bond of Rs. 1,00,000/- (Rs. One lakh only) with one surety in the like amount.

(ii) The applicant shall not issue threats or tamper the prosecution witnesses.

(iii) The applicant shall attend Police Station once in a month on every first Thursday of the month.

(iv) The applicant shall surrender his passport to the concerned Police Station.

10. Needless to mention that the observations made in this application are strictly for deciding the present application of the applicant and the trial Court shall not get influenced by the same and shall be free to decide the matter on its merits.

JUDGE

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