

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

CRIMINAL APPLICATION (BA) NO.979 OF 2019

(Vishnu @ Pappu s/o Dhanraj Advani Vs. The State of Maharashtra thr. PSO PS
Nagbhid, Dist. Chandrapur)

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

Court's or Judge's orders.

Shri R.M. Daga, Advocate for Applicant.
Shri S.M. Ghodeswar, APP for Respondent/State.

CORAM: ROHIT B. DEO, J.

DATE: 24th FEBRUARY, 2020.

Eighteen accused are charge-sheeted for offence punishable under Sections 302, 307, 353, 332, 333, 363, 403, 417, 201, 120 (B) of the Indian Penal Code along with Section 3(1)(i)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act and Section 65(A), 82, 83 of the Maharashtra Prohibition Act registered at Nagbhid Police Station vide Crime 439/2019.

2] The applicant is arrayed as accused 14.

3] While eight co-accused are released on bail, the applicant is in custody since 12.11.2018.

4] The case of the prosecution, as is culled out in the affidavit in response filed on behalf of the State, is that on 06.11.2018 at 06:00 a.m. secret information was received that one white color Scorpio bearing registration MH-34 AM-2810 was transporting contraband. Police escort comprising PSI Achalkumar Malkapure, PSI Chatrapati

Chide and others attempted to intercept the said vehicle. However, instead of stopping, the driver of the vehicle accused Prasannajit @ Chhotu Haldar rammed the vehicle on the person of PSI Chide and Police Constable Sandeep with the intention of killing them. PSI Chide sustained multiple injuries to which he succumbed. The offending vehicle along with some of the accused went to Advani Dhaba situated at Pachgaon road. The contraband i.e. liquor bottles were unloaded at the said Dhaba on the instructions of the applicant who is the owner of the said Dhaba and the son of the applicant Mulidhar @ Mehul Advani, who is arrayed as accused 17. The case of the prosecution is that the applicant and the other co-accused Murlidhar @ Mehul tampered with the DVR of the CCTV camera installed at the Dhaba with the intent of destruction of evidence.

5] The prosecution case is that during the investigation it transpired that the son of the applicant, co-accused Mehul, had a liquor shop at Nagpur and used to regularly supply liquor to the gang headed by co-accused Shahjad Sheikh for sale in Chandrapur district in which prohibition is enforced. The applicant used to manage Advani Dhaba and the Beer Bar and the Petrol Pump. The *modus operandi* of the gang leader Shahjad Sheikh was to collect liquor from the Good Luck Wine Shop of the co-accused Mehul Advani, to transport the liquor to Advani Dhaba and from Advani Dhaba to transport the liquor to the prohibited areas by concealing the liquor in the vehicle. According to the prosecution, the applicant was facilitating

the said illegal transportation.

6] The prosecution further alleges that on the day of the incident the gang leader Shahjad Sheikh and the son of the applicant Mehul were in touch. Thirty-five boxes of liquor were loaded in the Scorpio from the shop of the applicant's son on 05.11.2018, the vehicle halted at Advani Dhaba and then the vehicle proceeded towards Nagbhid. It was thereafter that the unfortunate death of the PSI Chide occurred.

7] According to the prosecution, after the incident the gang leader Shahjad Sheikh along with his associates went to Advani Dhaba in the Scorpio vehicle and two other vehicles and the liquor bottles were unloaded on the instructions of co-accused Mehul. The prosecution alleges that the applicant was aware that due to the dash given by the Scorpio vehicle one Police Officer died while discharging duty and yet helped the accused by destroying the evidence. The prosecution has placed on record the following chart, which reveals the criminal antecedents of the applicant:

Sr. No.	Police Station & District	Crime No.	Offences
1.	P.S. Mul, Dist. Chandrapur	477/2018	u/s 65(e) of Maharashtra Prohibition Act r/w 188 of Indian Penal Code.
2.	P.S. Mul, Dist. Chandrapur	821/2017	u/s 65(2), 83 of Maharashtra Prohibition Act.
3.	P.S. Chimur, Dist. Chandrapur	551/2018	u/s 65(e), 83 of Maharashtra Prohibition Act r/w 188 of Indian Penal Code.

4.	P.S. Lakadganj, Nagpur.	6026/2018	u/s 65(e) of Maharashtra Prohibition Act.
5.	P.S. Kuhi, Dist. Nagpur	265/2017	u/s 307, 504, 34 of Indian Penal Code r/s 3/25 of Indian Arms Act.
6.	P.S. Sakardara, Nagpur	242/1990	u/s 147, 148, 149, 324 of Indian Penal Code.

8] While considering this application, two questions need to be addressed. The first question is whether, *prima facie*, the provisions of the Maharashtra Control of Organized Crime Act, 1999 (MCOC Act) are attracted. The learned APP Shri Ghodeswar would submit that the applicant has challenged the sanction order under the provisions of the Maharashtra Control of Organized Crime Act (MCOC Act) in criminal writ petition which is pending before the Division Bench. The submission is that this Court must refrain from making any observation on the applicability of the provisions of the MCOC Act. The submission is considered only for rejection. If this Court finds, that the provisions of MCOC Act are even *prima facie* attracted, that would be extremely relevant factor and may entail the rejection of the bail. In this view of the matter, whether the provisions of the MCOC Act apply, on the face of the material, would have to be looked into. Needless to record, the view expressed would be a *prima facie* view and in any event, the view expressed by a Single Judge while deciding the bail application would not have any bearing in the proceedings seeking annulment of the sanction order which are pending before the Division Bench.

9] Section 2 (d) of the MCOC Act defines

continuing unlawful activity. The said provision reads thus:

(d) “continuing unlawful activity” means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence.

10] Section 2(e) defines organized crime. The *sine qua non* is that there must be a continuing unlawful activity. The said provision reads thus:

(e) “organised crime” means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency.

11] The prosecution has invoked the provisions of Section 3(2)(4) of the MCOC Act against the applicant. However, there is no material on record to suggest that the crimes which are detailed in the chart were undertaken either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate. In all fairness, it is not even argued by the learned APP Shri Ghodeswar that out of the six crimes which are referred to in the chart any particular crime was undertaken as a member of an

organized crime syndicate or on behalf of such syndicate.

12] It would therefore, be safe to proceed on the assumption, that, at least at this stage, the applicability of the provisions of the MCOC Act to the applicant appears to be extremely debatable and contentious. Since the learned Division Bench is in seisin of the issue, I am not inclined to make any decisive observation on the applicability of the MCOC Act. However, since I am deciding the bail application in which the applicability of MCOC Act is an extremely significant factor, I have indicated my *prima facie* view as aforestated.

13] The death of the Police Officer is extremely unfortunate. The Police Officer was discharging his duty and appears to have been ruthlessly mowed down, if the prosecution version is accepted. However, there is no material on record to connect the applicant with the extremely serious crime of assaulting and killing a police officer on duty. The submission of the learned APP is that the applicant facilitated destruction of evidence. Even if this submission is taken at face value, the offence which shall be made out would be under section 201 of the Indian Penal Code. The applicant is in custody since 12.11.2018 and since the involvement of the applicant in offence punishable under section 302 of the IPC is not *prima facie* made out, at least at this stage, there is no reason why the applicant should be further incarcerated.

14] The applicant be released from custody on the following conditions.

- [i] The applicant shall furnish P.R. bond of Rs.2 lakh with a solvent surety of like amount.
- [ii] The applicant shall not make any attempt to influence the course of investigation.
- [iii] The applicant shall report at Nagbhid Police Station every Monday between 11:00 a.m. to 03:00 p.m. till the conclusion of the trial.

15] It is made abundantly clear that any observation made herein is strictly restricted to the role of the applicant and no assistance therefrom shall be sought by any other co-accused including co-accused Mehul Advani.

JUDGE