

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

920 BAIL APPLICATION NO.187 OF 2021

**BHASKAR @ JOKAR SAHEBRAO SHINDE
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr. Gaikwad Satish A.
APP for Respondents/State : Mr. S.P. Sonpawale
...

**CORAM : M.G. SEWLIKAR, J.
DATE : 26th August, 2021**

PC.:-

This is an application under Section 439 of the Cr.P.C. for releasing the applicant on bail in connection with Crime No. 88 of 2017 (Special Case No.40/2020) registered with Majalgaon City Police Station, District Beed.

2. The allegations against the applicant are that on 14.09.2017 the informant along with the family members was sleeping on the first floor of his house. His parents were sleeping on the ground floor. At about 4.12 am, father of the informant by the name of Ramrao informed him on cell phone that there was a theft in the house. When he came down, he saw that the cupboards were open and all the articles were lying scattered. His father told him that at about 3.30 to 4.00 am three persons had trespassed into the

house. They had masked their faces. They committed robbery of golden ornaments worth Rs.3,38,000/-. On the basis of this information FIR came to be registered under Section 392 read with Section 34 of the I.P.C. and under Section 3(i)(ii), 3 (2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (in short 'MCOC' Act).

3. Heard Shri Gaikwad learned counsel for the applicant and Smt. Jape learned APP for the State.

4. Learned counsel Shri Gaikwad submitted that the only evidence against the applicant is the statement of the co-accused recorded under Section 27 of the Indian Evidence Act. He submits that no recovery could be effected from the applicant. According to him, MCOC Act is not applicable to the case at hand as after the applicant was arrested other offences came to be registered against him. He submits that in order to invoke the provisions of MCOC, two charge-sheets ought to have been filed and cognizance of them ought to have been taken by the Court. Only then it could be called as continuing unlawful activity. In the case at hand, this is not the position. He placed reliance on the case of **Mahipal Singh Vs. C.B.I. and Ors.; AIR 2014 SC 2660**.

5. Learned APP submitted that this is the only evidence against the

applicant. No recovery could be made against him. However, offence is serious in nature. He should not be released on bail.

6. Continuing unlawful activity has been defined under Section 2(d) of the MCOC Act as under:

2(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;

Requirement of this section is that more than one charge-sheets ought to have been filed before the competent Court within the preceding period of ten years and that Court has taken cognizance of such offence. Organised crime syndicate is defined in Section 2(f) as a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime.

7. In the case at hand, it appears that this is the first offence registered against the applicant, it was registered on 14.09.2017. The charge-sheet shows that three offences came to be registered against the applicant,

their details are as under:

5	भास्कर साहेबराव शिं, ऊर्फ जोकर, वय 40 वर्ष, रा. ईरगाव, ता.जि. जालना	मजलगाव शहर जि. बीड	मजलगाव शहर 70 / 17 कलम 395, 120(ब)	3 / 10 / 2017 रोजी 18:30 वा अटक	तपासावर
		मजलगाव ग्रामीण जि. बीड	183 / 2017 कलम 394, 457 भा.द.वी.	5 / 10 / 2017 रोजी 20:15 वा अटक	तपासावर
		मजलगाव शहर जि. बीड	88 / 2017 कलम 395, 120 (ब) भा.द.वी.	27 / 9 / 2017 रोजी 00:37 वा अटक	तपासावर

These details show that on the date of registration of the offence in question, no offence was registered against the applicant. All these three offences came to be registered after the registration of the offence in question. Therefore, quintessential requirements of filing of more than one charge-sheets before the competent Court and cognizance of offence by that Court are not fulfilled.

8. In the case of **Mahipal Singh** cited (supra), the Hon'ble Apex Court observed as under:

“9. From a plain reading of the aforesaid provision, it is evident that to come within the mischief of continuing unlawful activity, it is required to be established that the accused is involved in activities prohibited by law which are cognizable offence punishable with imprisonment of three years or more and in respect thereof, more than one charge-sheets have been filed

against such person before a competent court within the preceding period of ten years and that court has taken cognizance of such offence.”

9. In the case at hand as discussed herein-above, no charge-sheet was pending against the applicant rather no offence was registered against him. Therefore provisions of MCOC Act cannot be invoked. In this view of the matter, applicant is entitled to be released on bail. Hence the following order is passed:

ORDER

- I) Application is allowed.
- II) Applicant be released on PR bond of Rs.15,000/- with one solvent surety in the like amount, in connection with Crime No.88 of 2017 under Section 392 read with Section 34 of the I.P.C. and under Section 3(i)(ii), 3(2), 3(4) of MCOC Act registered with Majalgaon City Police Station, District Beed.
- III) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]