

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

916 BAIL APPLICATION NO.629 OF 2021

Sonu @ Sandeep Mohan Duggal
Age : 34 years, Occu : Business,
R/o. Gawde Malla, Yashoda Nagar,
Savedi, Ahmednagar

.. Applicant

Versus

The State of Maharashtra

.. Respondent

...
Advocate for the Applicant : Mr. S.S. Kazi
APP for Respondent / State : Mr. N.T. Bhagat
...

CORAM : M. G. SEWLIKAR, J.

DATE : NOVEMBER 26, 2021

PER COURT : -

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant/accused on bail in connection with Crime no. I-36/2017 registered with M.I.D.C. Police Station, Ahmednagar for the offences punishable under Sections 304, 328 r/w 34 of the Indian Penal Code, 1860, Sections 65(a), (b), (c), (d), (e), (f), 68(a)(b), 80(1) (2) of Maharashtra Prohibition Act, 1949 and Sections 3(1) (i) (ii), 3(2), (3), (4) and 4 of the Maharashtra Control of Organized Crime Act, 1999.

2. The informant is a driver. Accused - Smt. Mangal Avhad and accused - Smt. Bhagyashri Mokate were contesting elections of Panchayat Samittee, Jeur. On 12-02-2017, accused - Smt. Mangal Avhad had hosted a dinner for the activists. The menu of the said dinner included vegetarian and non-vegetarian food. The brothers of the informant namely, Popat Rangnath Avhad and Dilp Rangnath Avhad, had gone for canvassing of accused - Smt. Mangal Avhad. They came home drunk between 09:30 to 10:00 p.m. and went off to sleep immediately.

3. It is further alleged that on 13-02-2017, both Popat Rangnath Avhad and Dilip Rangnath Avhad started vomiting. On enquiry, Popat Rangnath Avhad told informant that he and Dilip Rangnath Avhad had dinner at the residence of accused- Smt. Mangal Avhad and had also drunk country liquor there. Both Popat Rangnath Avhad and Diliip Rangnath Avhad were admitted in the hospital. However, both of them died during treatment. One Rajendra Khandu Andhale also died during treatment in Civil Hospital at Ahmednagar. On the basis of these allegations, an FIR was lodged against the accused.

4. During investigation, it transpired that the applicant herein used to collect empty bottles of liquor of Officer's Choice brand. The

applicant's father was running a canteen and used to supply country liquor in these empty bottles. Therefore, the applicant is also roped in this offence. After completion of the investigation, the charge-sheet came to be filed against the applicant under the aforesaid offence.

5. Heard Shri. S.S. Kazi, learned Counsel for the applicant and Shri. N.T. Bhagat, the learned APP for the State.

6. Shri. Kazi, learned Counsel for the applicant, submits that the only allegation levelled against the applicant is that he used to collect empty bottles of Officer's choice brand and provide it to his father, who was running a canteen and also involved in manufacturing of country liquor. He submits that there is no allegation against the applicant that he was manufacturing liquor. He submits that the allegations are against the father of the applicant and father of the applicant has left for heavenly abode. He submits that no offence prior to the offence in question has been registered against the applicant. The offence under Section 304 of the IPC is registered against the applicant, which is punishable with imprisonment for life.

7. Shri. N. T. Bhagat, learned APP, submits that subsequent to the

registration of the offence in question, another offence bearing Crime No. 87 of 2017 has been registered against the applicant. He submits that this offence came to be registered in Newasa Police Station subsequent to the offence in question. He further submits that, therefore, MCOC can also be applied in this case.

8. In order to invoke provisions of MCOC Act, there has to be continuing of an activity by an 'organized crime syndicate' either acting singly or collectively as a syndicate or gang. Requirements for invoking the provisions of MCOC Act are extensively discussed by the Division Bench of this Court in its judgment dated 26th March, 2009, in the case of Madan S/o. Ramkisan Gangwani Vs. The State of Maharashtra and other connected matters (Criminal Appeal No. 308 of 2002), which read thus :-

“34. In Ranjitsingh's case the learned Single Judge observed that the definitions, though intertwined in a cyclic order, are clear and unambiguous. Even the Apex Court in Bharat Shah's case (2008 AIR SCW 6431) observed that the definitions were not vague and they defined the terms with clarity. It would, therefore, follow that each ingredient in the definitions, or the alternative thereof provided by the definitions themselves, would have to be proved. Viewed thus, for charging a person of organised crime or being a member of organised crime syndicate, it would be necessary to prove that the persons concerned have indulged in:

(i) an activity,

(ii) which is prohibited by law,

(iii) which is a cognizable offence punishable with imprisonment for three years or more,

(iv) undertaken either singly or jointly,

(v) as a member of organised crime syndicate i.e. acting as a syndicate or a gang, or on behalf of such syndicate.

(vi) (a) in respect of similar activities (in the past) more than one charge sheets have been filed in competent court within the preceding period of ten years,

(b) and the court has taken cognizance of such offence.

(vii) the activity is undertaken by :

(a) violence, or

(b) threat of violence, or intimidation or

(c) coercion or

(d) other unlawful means.

(viii)(a) with the object of gaining pecuniary benefits or gaining undue or other advantage or himself or any other person, or

(b) with the object of promoting insurgency.”

9. Thus for invoking provisions of MCOC Act, there must be continuing unlawful activity by an individual, the said activity must be committed singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate. Such activity must have been taken place with the objective of gaining pecuniary benefits

or for gaining undue economic or other advantage for himself or any other person or promoting insurgency.

10. In the case of Deepak Madhavrao Mankar v. State of Maharashtra reported in 2019 SCC OnLine Bom 8036, this Court held as under : -

“20. So far as the Petitioner in WP No.3741 of 2019 is concerned, he is not named in any of the 8 crimes/ FIRs referred to above by the competent authority while giving approval under section 23(1)(a). In the light of provisions of the MCOC Act, referred to above, it is mandatory that more than one charge-sheet alleging the commission of the offence punishable with imprisonment of three years or more ought to have been there in order to apply the stringent provisions of MCOC Act. Therefore, prima facie the approval authority seems to have passed the impugned order without application of mind as to whether the offences charged were committed by various accused as members of organised crime syndicate.”

11. When the facts of this case are analyzed on the touchstone of the principles laid down in the aforesaid cases (supra), it reveals that the provisions of MCOC Act cannot be invoked in the case in hand. Admittedly, no offence was registered against the applicant prior to the offence in question. Mere registration of the offence is not enough. Requirement is that charge sheet ought to have been filed and cognizance of the offence ought to have been taken by a competent court. These basic requirements are not fulfilled.

Subsequent registration of the offence is not a criteria for making stringent provisions of MCOC Act applicable.

12. So far as the merit of the matter is concerned, the applicant was not directly involved in manufacturing of liquor. The applicant's role is restricted to the extent of only collection of empty bottles and provide it to his father. Having regard to this and the fact that offence is not punishable with imprisonment for life, I am inclined to release the accused on bail. The applicant has no criminal antecedents. Nothing is brought on record to show that the applicant, if released on bail, will not be available for trial. In this view of the matter, I am inclined to pass the following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant be released on bail on his furnishing PR Bond of Rs.25,000/- (Twenty Five Thousand) with one solvent surety in the like amount, in connection with Crime no. I-36/2017 registered with M.I.D.C. Police Station, Ahmednagar for the offences punishable under Sections 304, 328 r/w 34 of the Indian Penal Code, 1860, Sections 65(a), (b), (c), (d), (e), (f), 68(a)(b), 80(1) (2) of

Maharashtra Prohibition Act, 1949 and Sections 3(1) (i) (ii), 3(2), (3), (4) and 4 of the Maharashtra Control of Organized Crime Act, 1999.

(iii) The applicant shall not leave the jurisdiction of the concerned Court without permission of the Court.

(iv) He shall deposit passport, if any, with the concerned police station.

(v) The application is disposed of.

(vi) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

[M. G. SEWLIKAR]
JUDGE