

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

CRIMINAL BAIL APPLICATION NO. 75 OF 2021

Karshid Ramchandra Dhone	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Yuvaraj S. Gharal for Applicant.

Mr. S. H. Yadav, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 09th JUNE, 2021

(Through Video Conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 26 of 2019 registered at Hupri police station, Kolhapur, under sections 397 and 120-B of the Indian Penal Code (for short 'IPC') and under sections 3 and 27 of the Indian Arms Act. Subsequently, sections 3(1)(ii), 3(2), 3(4) and 3(5) of The Maharashtra Control of Organised Crime Act, 1999 were added. The applicant was arrested on 07/02/2019 and since then he is in custody.

2. Heard Shri. Yuvaraj Gharal, learned counsel for the applicant and Shri. Yadav, learned APP for the State.

3. The First Information Report (for short 'F.I.R.') was

lodged on 25/01/2019 by one Shrirang Poojari. He has stated that, he was having a jewellery shop, dealing in silver ornaments. He was looking after this business with his father and uncle. That shop is situated in village Kardaga by name Balumama Jewellers. As usual practice, they open their shop at 9:00a.m. and close it at 7:00p.m. On 25/01/2019 they attended to their business as usual and at 7:00p.m. the informant and his father Dattatraya started to go to their house at Hupri. They were travelling on a motorcycle driven by informant's father Dattatraya. They were having Rs.7000/- and three tola of gold in a bag. When they reached at the place around 5km. away from where they had started, they were intercepted by another two wheeler. There were two unknown persons on that two wheeler. They forcibly tried to take away that bag. When the informant and his father resisted, one of the unknown persons fired at the informant's father. The bullet hit him on the abdomen. Then assailants removed wrist watch and silver ring from the hands of informant's father. The informant raised shouts, therefore those assailants went away on their two wheeler. The F.I.R. mentions description of those persons. The

F.I.R. was supported by the statement of Dattatraya Poojari recorded during the investigation. When he was in the hospital he had also given description of the assailants. The investigation was carried out and during the investigation both of them identified accused Vishal Rupnur and Bhartesh Aswale as the persons who had tried to rob them. During investigation it was revealed that the offence was committed by an organized crime syndicate and, therefore, provisions of MCOC Act were applied.

4. Learned counsel for the applicant submitted that the statement of co-accused Aswale shows that the applicant had met his co-accused at a different place and not anywhere near the spot of incident or in the village. He submitted that, though, the prosecution case is that the applicant gave a tip about the informant, there is not a single phone call between the applicant and main accused Vishal Rupnur or any other accused on that particular date or anytime prior to the incident. There is nothing to show that the incident had taken place pursuant to the applicant's tip. He submitted that, there are no antecedents against the present applicant and, therefore, offence did not fall within the

meaning of MCOC Act, so far as, present applicant is concerned. He submitted that, there is no sanction under section 23(2) of the MCOC Act.

5. Learned APP opposed this applicant and relied on the investigation carried out including the applicant's own confession.

6. I have considered these submissions and I have perused the charge-sheet with the assistance of both learned counsel. The informant's father had suffered serious bullet injury causing entry and exit wound on abdomen in left hypochondrium and above left iliac crest. He had to undergo surgery. Therefore, the offence had assumed even more seriousness. Though the applicant does not have any other antecedents, his own confession recorded under section 18 of MCOC Act succinctly explains his role in his own words. He has stated in his confession that injured Dattatraya Poojari was applicant's relative. He was resident of Hupri and was having business of silver jewellery. They have a shop at Kardaga by the name Balumama and they were also selling gold ornaments. He has further stated that this applicant had kept watch on the movements of Dattatraya and he had observed that

informant and Dattatrya used to close their shop between 6:30p.m. to 7:00p.m. and they used to carry ornaments in a bag. They used to travel on motorcycle. He has clearly stated that, he had passed on this information to the main accused Vishal Rupnur on 20/01/2019 telephonically. After that, Vishal, accused Nikhil, Maruti and Bhartesh Aswale had met this accused/applicant and they had decided to commit robbery on the road. At that time the applicant felt apprehensive but Vishal had threatened him. After that, this particular incident had taken place on 25/01/2019. Thus, this statement clearly shows that the main incident would not have taken place without active participation of the applicant in planning to commit this offence. In this view of the matter, at this stage, there is sufficient material against the applicant. Therefore, it is not possible to record the satisfaction that the applicant has not committed any offence under the MCOC Act. Consequently, bail cannot be granted to the present applicant in this case.

7. Application is rejected.

(SARANG V. KOTWAL, J.)