

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

CRIMINAL BAIL APPLICATION NO. 555 OF 2020

Deshbhushan Mahavir Upadhey Applicant
Versus
The State of Maharashtra Respondent

Mr. Vivek N. Arote, for the applicant.
Mr. Ajay Patil, APP for the State/Respondent.

**CORAM: SARANG V. KOTWAL, J.
DATE : 2nd JULY, 2021**

P.C. :

1. Pracepie is moved for speaking to minutes for correction in C.R. number in the order dated 25/06/2021. In the first paragraph C.R. No. 135/2019 is mentioned. Similarly, in the operative part in paragraph no. 15(i) C.R. No. 135/2019 is mentioned. As per the prayer correct C.R. No. is 132 of 2019. At both these places, correct C.R. number i.e. C.R. No 132 of 2019 be mentioned.
2. Correction be made accordingly.
3. Rest of the order shall remain as it is.
4. Corrected order be uploaded.

(SARANG V. KOTWAL, J.)

CORRECTED ORDER DATED 25th JUNE 2021 READS THUS:-

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
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CRIMINAL BAIL APPLICATION NO.555 OF 2020

Deshbhushan Mahavir Upadhey	 Applicant
versus	
State of Maharashtra	 Respondent

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- Mr.Aniket Nikam i/b. Vivek N. Arote, Advocate for Applicant.
- Mr.Jayesh P. Yagnik, APP for the State/Respondent.

CORAM: SARANG V. KOTWAL, J.
DATE : 25th JUNE, 2021
(Through video conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.132/2019 registered with Shahapur Police Station, Kolhapur, under sections 395, 392, 386, 387, 452, 326, 504, 506, 427 r/w 120-B of the Indian Penal Code and under sections 3(1)(ii), 3(2), 3(4), 3(5) of the Maharashtra Control of Organised Crime Act (for short 'MCOC') Act. The Applicant was arrested on 20/05/2019 and since then he is in custody. Investigation as far as he is concerned is over and the charge-sheet is already filed.

2. The FIR is lodged by one Narendra Suresh Bhore on 18/05/2019. He has stated that he had got married to one Swapnali on 21/07/2003. He had two sons from that marriage. There was matrimonial dispute between him and his wife Swapnali and therefore since 3 years prior to lodging of the FIR, she was residing separately at Ichalkaranji. The informant had filed Hindu Marriage Petition No.57/2017 for divorce in the Court of Civil Judge, Senior Division, Jaysingpur. According to the first informant, his wife is supported by Sanjay Telnade, Sunil Telnade, who are gangsters. They are doing so because one Advocate Pawankumar Upadhye, who was looking after their affairs and legal matters was cousin of the informant's wife. Advocate Pawankumar had demanded Rs.25 lakhs to settle the matter.

3. On 06/07/2017 when he was going towards Jaysingpur with his friend Sanjay, he received his mother Shakuntala's call. She told him that about 15-20 persons were standing outside their door. The informant

and Sanjay returned back to informant's house. At that time, he saw Rishikesh Londhe, Arvind Maske, Rakesh Kumbhar, Deepak Kore, Imran Kalawant, Rahul Chavan, Arif Kalawant, Abhijit Jamdar, Sandesh Kapse and other 5 to 7 unknown persons present outside his door. When the informant questioned them, they demanded Rs.25 lakhs and started assaulting the informant and his friend Sanjay with iron rod and sticks. They damaged the house, broke window panes and caused damage to the furniture and other articles in the house. They took away a table clock and a goggle. While going away, Deepak Kore amongst them, again threatened him. They went away in Innova car and motorcycles. The informant has mentioned that he did not have courage to lodge FIR at that time of time. The informant and his friends Sanjay got treatment at Deshmukh Orthopedic Hospital, Ichalkaranji. According to him, his right rib was fractured and Sanjay had suffered injury to his head. It is mentioned in the FIR that the said gang, which was mentioned as 'ST Sarkar Gang' continued harassing and threatening the informant. After some time, the

informant came to know that the police were taking action against Sanjay, Sunil and Pawankumar Upadhye and because of that, most of the gang members had absconded. After coming to know this, the informant gathered courage and lodged this FIR.

4. At this point, it is important to mention that the informant had not named the Applicant in the FIR. This is a very important feature in the context of this case.

5. The informant's supplementary statement was recorded on 19/05/2019. The supplementary statement makes interesting reading. It was mentioned therein, that, after his FIR police had arrested certain accused. They were shown to the informant. At that time, the persons who were arrested, told the police that the present Applicant was also with them at the time of incident mentioned in the FIR. The informant has further stated in his supplementary statement that after lodging the FIR, he was trying to remember names of other persons and at that time, he remembered name

of the present Applicant and therefore his name was introduced in the said supplementary statement dated 19/05/2019. Based on this supplementary statement, the Applicant was arrested on 20/05/2019 and since then he is in custody.

6. Heard Mr.Aniket Nikam i/b. Vivek N. Arote, learned counsel for the Applicant and Mr.Jayesh P. Yagnik, learned APP for the State.

7. Learned counsel for the Applicant submitted that in the entire charge-sheet there is nothing to show that the Applicant was a member of any organized crime syndicate including the one, which is mentioned as 'ST Sarkar Gang'. He submitted that the alleged incident had taken place on 06/07/2017 and the FIR was lodged on 18/05/2019 after almost two years. No plausible explanation was offered. This delay was inordinate and unexplained. He submitted that supplementary statement of the informant itself shows as to how the Applicant was falsely implicated. He

submitted that charge-sheet includes injury certificate of the informant. It shows that, he had suffered simple trauma on chest. There was no rib fracture as alleged by him. There is no medical certificate as far as Sanjay is concerned. He submitted that there is absolutely no material against the present Applicant either to show that he was either member of any organized crime syndicate or that he had taken part in the incident. Therefore his continued detention behind bars is totally unwarranted. He further submitted that though, in the past, it was mentioned on behalf of the Applicant that learned counsel for the Applicant was to take instructions whether the application was to be withdrawn. However the Applicant did not give such instructions and the application was not withdrawn. The Applicant has extremely good case on merits and he deserves to be released on bail.

8. Learned APP Mr.Jayesh P. Yagnik has vehemently opposed this application. He submitted that, role of the Applicant cannot be separated from

those of other accused. At this stage it would be premature to make any observations in that behalf. Accused Nos.1 and 2 are absconding. Their petition for challenging MCOC is disposed of. He submitted that the issue as to whether MCOC is properly applied in this case or not is pending before Division Bench in the petition filed by the petitioner. He submitted that the bar of section 21(4) of MCOC will operate against the present Applicant.

9. I have considered these submissions. As far as pendency of the petition is concerned, it is a separate subject matter and it cannot come in the way of Applicant exercising his right of filing bail application in the present matter.

10. I have considered all these submissions and with assistance of both learned counsel I have perused the entire charge-sheet as well as the affidavit filed by the investigating officer. In this case, the approval for investigating u/s 23(1) of MCOC Act was granted by the

competent authority on 19/05/2019. The charge-sheet shows that the sanction u/s 23(2) of MCOC Act was granted on 11/11/2019. Antecedents against the accused are mentioned by the Investigating Officer in the report submitted to the Special Court in which there is a long list of previous offence against others. But against the Applicant, there is not a single criminal antecedent. There is nothing to show that the Applicant had acted in collusion with any of the other accused in any of the previous case filed against the co-accused.

11. Coming back to the merits of the matter, the date of the FIR lodged by the informant is important. It is lodged after a long period of about two years as mentioned earlier. Even then, after having sufficient opportunity to remember everything, the informant has not named the present Applicant. The investigating agency has recorded his supplementary statement, in which it is mentioned that the other arrested accused had told the police and the informant that the Applicant was also one of them when the incident had taken place

i.e. on 06/07/2017. This supplementary statement is highly unbelievable. In any case, the delay in lodging the FIR and absence of Applicant's name in the FIR, in spite of such delay, is very significant and that by itself entitles the Applicant to be released on bail. His arrest is absolutely unjustifiable.

12. Even otherwise, there is no other material against the present Applicant. Eyewitness Sanjay, who was accompanying the informant and who was also allegedly assaulted has given his statement on 27/06/2019. Even he has not named the Applicant. In fact he has not named anybody as those were persons were unknown to him. No test identification parade is held to enable him to identify the present Applicant. Similar is the case of another eyewitness Rohit Shah. Hence there is no material against the present Applicant.

13. As far as medical evidence is concerned as mentioned earlier, there is an injury certificate, which

was issued by the medical officer of Deshmukh Orthopedic Hospital. Here again he had mentioned that the informant had suffered only simple trauma to his chest. There is nothing to show that the informant had suffered rib fracture. This certificate also mentioned that the other alleged injured Sanjay had never gone to this hospital for any treatment. This also falsifies the informant's case in the FIR.

14. Thus, it can be seen that there is absolutely no acceptable material against the present Applicant in the charge-sheet, as far as this evidence is concerned. There is an alleged confessional statement given by one of the accused. It is given by co-accused Sandesh Kapse. In this statement recorded on 07/07/2019 in one paragraph, he has stated that on the date of incident, the Applicant was also present with others. Here again no special role is attributed to him. However, this being confession of the co-accused it has a very limited evidentiary value in the absence of any other incriminating material. In this view of the matter, in my

opinion, the Applicant's involvement in the entire offence is not made out at all. Therefore satisfaction u/s 21 (4) of MCOC Act be recorded. From the above discussion, I am satisfied that there are reasonable grounds for believing that the Applicant is not guilty of offence under the Act. He does not have criminal antecedents. Therefore it can also be recorded that the Applicant is not likely to commit any offence while on bail. Once I have reached this satisfaction, there is no impediment in granting bail to the present Applicant.

15. Hence, the following order :

ORDER

- (i) In connection with C.R.No.132/2019 registered with Shahapur Police Station, Kolhapur, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two sureties in the like amount.

- (ii) The Applicant shall deposit his passport, if any, with the Investigating Officer.
- (iii) The Applicant shall not leave country without prior permission of the trial Court.
- (iv) The Applicant shall attend office of the Investigating Officer once in a month till framing of the charges.
- (v) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)